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TRANSCRIPT OF RECORD

(Pages 897 to 1229)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 278

RECONSTRUCTION FINANCE CORPORATION, INSURANCE GROUP COMMITTEE, CENTRAL HANOVER BANK AND TRUST COMPANY, PETITIONERS,

vs.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, ET AL.

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 30, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

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[fol. 1234] Q. In order to keep the record clear, please tell us the companies whose assets were inventoried as of the valuation date, that is, June 30, 1919.

A. The Denver and Rio Grande Railroad Company, which was the predecessor of the debtor, and The Rio Grande Junction Railway Company.

Q. Taking first the road accounts, tell us how the assets of The Denver and Rio Grande and of the Rio Grande Junction were valued, that is to say, were translated into dollars.

A. Prices were applied by representatives of the Bureau of Valuation to all units as recorded during the joint inventory. These prices were determined for the so-called normal pricing period of the years 1910 to 1914, inclusive. The effect of this was that quantities were taken as of June 30, 1919, and average prices for the period 1910 to 1914 were applied to these quantities.

Q. Referring still to the ad accounts, tell us whether you have given any consideration to any quantities which may have been added subsequent to June 30, 1919.

A. I have.

Q. Tell us the manner in which this was done.

A. All units of property added or retired from June 30, 1919, to December 31, 1932, were reported by us to the Bureau of Valuation together with their costs. Retirements of property were deducted from quantities recorded in the inventory and proper deductions made in the money total thereof. The costs of all units of property added, as reported by us to the Bureau of Valuation, were reduced by representatives of the Bureau to the 1910-14 price levels thus producing a sum of money for each account and for [fol. 1235] each valuation section which was added to the values already shown by valuation sections and accounts remaining in the original inventory.

Q. Tell us how the costs of quantities added subsequent to June 30, 1919, were reduced by the Bureau of Valuation to the 1910-14 prices.

A. For the units in most of the accounts and particularly those in the mass accounts, such as grading, bridges, ballast, etc., the 1910-14 prices as jointly determined and used in the inventory were applied to reduce the costs of units as reported for the period June 30, 1919, to December 31, 1932, to the 1910-14 base. For some of the accounts trend

factors or divisors were used. After careful study we accepted the Bureau's determination of these divisors as being approximately correct.

Q. State whether or not you checked the method used by the Bureau.

A. We did.

Q. What was the result of your check?

A. We accepted the Bureau's determination of these divisors as being approximately correct; that is to say, we accepted the Bureau's collection of units and repricing of these added units and their assembly with the units remaining in the inventory.

Q. Tell us whether you made any effort to determine the reproduction costs of these units of physical property as of December 31, 1938.

A. I did.

Q. Tell us how you did that.

A. Using the amounts of money as recorded by the Bureau for each account and for each valuation section as a base, [fol. 1236] we determined the index or multiplier for each element in each account by finding the relation of present day prices and costs to those of the 1910-1914 period. Then by determining the percentage relationship of the money in each account to the total roadway money for each valuation section we computed a composite multiplier which when applied to the 1910-14 money trended the money in each valuation section to the 1938 period.

Q. Describe to us the manner in which you have handled the additions and betterments made between December 31, 1932, and December 31, 1938.

A. I simply added our recorded costs for the units added during this period.

Q. Why did you handle these items in this manner?

A. Because after a study of prices for the several years in this period I was convinced that the average of the period would be reasonably close to the prices as of December 31, 1938. In other words, if the costs of these items had been trended to December 31, 1938, there would be no material difference in the result.

Q. Tell us, please, how you determined price levels as of December 31, 1938.

A. I studied all reports and data I could find relating to prices and costs current at that time, as well as prices and costs of prior and subsequent periods. For instance,

I found available reports of the Bureau of Labor Statistics and those of the Department of Commerce, including such data as "All Commodity" curve, "Cost of Living," cost data on metals and metal products, building materials and data for wages of unskilled and skilled labor. Also I had ac-
[fol. 1237] cess to current figures on recognized construction indices, including Aberthaw, American Appraisal Company, Tuttle, Associated General Contractors, and the construction cost index published by the Engineering News-Record. I also had before me our own current costs of construction materials and our Purchasing Agent's records as well as rates of pay for labor. Supplementing this information, I obtained opinions from reputable contractors relative to grading and other costs affecting our mass accounts, and obtained opinions from representatives of the equipment companies as to current costs and trends. As a means of relating cost data over a period of years, I used the railroad construction cost indices compiled by the Engineering Section of the Bureau of Valuation of the Interstate Commerce Commission, which are a result of joint studies continually made by representatives of the Bureau of Valuation and the railroads.

Q. You state that your study of prices included periods prior and subsequent to December 31, 1938. What was the length of time prior and subsequent to December 31, 1938, the prices of which you studied?

A. I studied indices and prices for a two-year period prior to December 31, 1938, and obtained all data I could find available subsequent to that date up to the present time.

Q. State whether this involved a great deal of labor on your part.

A. It required considerable time and study.

Q. State whether or not it is your duty as Valuation Engineer of the debtor to keep in touch with the trend of costs and prices.

A. It it.

Q. Were the prices as of December 31, 1938, which you [fol. 1238] determined the prices at which in your judgment the reconstruction work could be done for on that date, or do the prices represent an average for some period?

A. I determined as best I could period or average prices, rather than spot prices as of a particular date.

Q. State whether or not these prices for each road account were determined separately.

A. They were. In fact, the prices for each element in each road account were considered separately.

Q. Taking account 6, Bridges, Trestles, and Culverts, for example, tell us in detail how price-levels were determined.

A. The elements in account 6 of the Interstate Commerce Commission, Road and Equipment Accounts, Account 6, are: Dry Excavation; Wet Excavation; Masonry; Plain Concrete; Reinforced Concrete; Untreated and Treated Piling; Untreated and Treated Stringers; Untreated Bents; Hardware; Guard and Bridge Timber, Untreated; Bulk Head Timber, second-hand; I Beams; Deck Plate Girders; Trusses; Through Plate Girders; Cast Iron Pipe; Other Pipe; and Miscellaneous. Latest cost data studies for each of these elements were examined. Construction work in which the elements were involved was used as a guide in forming opinions as to current prices. The relationship of the money for the various elements to the total money in the account was used to ascertain the multiplier or trend factor for the account.

Q. State whether or not a similar process was used for the elements in each of the other road accounts.

A. It was.

Q. Was one price level for each of the elements in each [fol. 1239] account determined for all the debtor's property or for this purpose was the property of the debtor divided or segregated in any manner?

A. The property was divided by states and price levels ascertained for each element in each account in each state. That is to say, one price level for each element was determined for Colorado; another price level for each element was determined for Utah; and another price level for each element was determined for New Mexico.

Q. After this was done, what was the next step which you took in this work?

A. The property in each state had already been divided into valuation sections by the Bureau of Valuation of the Interstate Commerce Commission. After determining the index factor or multiplier for each roadway account, the relation of the money in each account to the total money for each valuation section was computed and a composite multiplier was thus determined for all the accounts in each valuation section.

Q. What method is used by the Bureau of Valuation of the Interstate Commerce Commission to keep its valuation of common carrier property up to date?

A. Order No. 3 of the Interstate Commerce Commission requires each carrier to report annually all the units of property and costs of additions and betterments and all retirements of property. The Bureau assembles these units with those of previous years and either reprices them at 1910-14 prices or trends the costs to that level by use of divisors. Thereafter for any particular date the Bureau finds price levels for the various elements in the various [fol. 1240], accounts and computes multipliers to be used in trending the assembled 1910-14 money to the date for which its valuation is being prepared.

Q. Then state whether or not the method used by you is similar to that used by the Bureau of Valuation.

A. It is.

Mr. Goree: May we ask that the record show that the exhibit heretofore referred to as Objectors' Exhibit 1 hereafter be referred to as Debtor's Exhibit No. 1.

Q. Referring now to Debtor's Exhibit 1, I notice under the heading Road Accounts, "Cost of Reproduction New, Owned and Used, Colorado—$86,575,726." Tell us just what that figure represents.

A. It is the cost of reproduction new of road accounts, excluding land, of all property of The Denver and Rio Grande Western in Colorado, as it existed on December 31, 932, trended to the December 31, 1938, price level in the manner I have described.

Q. And what does the figure of $46,933,577 just below it represent?

A. It represents a similar figure for the State of Utah.

Q. What does the figure $5,553,539 just below the Utah figure represent?

A. A similar figure for property in the State of New Mexico.

Q. Explain the next three items of that exhibit.

A. The figure $116,777 represents the debtor's portion of jointly used property in all states, determined in a manner similar to the foregoing. Likewise, the figure $38,510 represents the debtor's property jointly owned but wholly used by the debtor, determined in a similar manner. The [fol. 1241] next figure $244,825——

Q. Before we get to the next figure, you say that the figure $38,510 represents the debtor's property jointly owned. Is that the debtor's portion of that jointly owned property?

A. That is the debtor's portion in this case, and the one immediately preceding.

Q. Now, proceed.

A. The figure $224,825 represents the 1938 cost of reproduction new of all units for all states in Account 37, Roadway Machines.

Q. That is the Interstate Commerce Commission Account No. 37, the Roadway Machine account?

A. Correct.

Q. Explain the item of $139,462,954 which follows next on the exhibit.

A. It is the total of the items which I have just mentioned.

Q. Now, please explain the next entry, "Net Additions and Betterments, $927,028."

A. It is the net total of additions and betterments and retirements made to the debtor's property in the road accounts, except land, during the period January 1, 1933, to December 31, 1938. As I have explained above, these are actual cost figures and have not been trended for the reasons which I have already given.

Q. Tell us, please, what the next entry on the exhibit, $140,389,982, represents.

A. It represents an estimate made in the manner I have described of the cost of reproduction new of all the debtor's property embraced in road accounts, except land, as of December 31, 1938.

Q. Taking now the next heading on Debtor's Exhibit 1, "Lands," tell us what the first item, "Carrier, $4,662,445," [fol. 1242] includes.

A. It includes the value of all debtor's lands classified by the Bureau of Valuation as "Carrier" lands.

Q. That "Carrier lands" means land used for common carrier purposes, doesn't it?

A. As classified by the Bureau.

Q. By the Bureau of Valuation. What does the next item, "Non-Carrier, $1,207,704," include?

A. It includes the value of all the debtor's lands classified as "Non-Carrier" by the Bureau of Valuation.

Q. Please tell us how these values were determined and as of what date.

A. They were determined by a joint appraisal of all the company's lands made in 1937 by representatives of the Bureau of Valuation and a representative of the debtor.

Q. Why do you use the 1937 figures?

A. Because I did not believe it was necessary to make a reappraisal as of 1938.

Q. Explain your answer, please.

A. The change in unit values of lands between the latter part of 1937, when the reappraisal was made, and December, 1938, is so slight as to be negligible.

Q. Explain the next item on Debtor's Exhibit 1 entitled "Additions and Betterments to Land Account to December 31, 1938," showing a credit or deduction of $24,390.

A. This figure represents the net changes in costs of lands acquired and value of lands retired subsequent to the 1937 reappraisal and prior to December 31, 1938.

Q. Explain the next item, "Total Value of Lands to December 31, 1938, $5,848,142."

[fol. 1243] A. It is my best estimate of the value of the lands belonging to the debtor as of December 31, 1938.

Q. Just a moment, Mr. Lightburn, the figures there differ. Which is correct, the figure in the exhibit or the figure in your draft there? They differ slightly, you see.

A. The exhibit is correct.

Q. So that the total value of lands December 31, 1938, is $5,845,759, instead of the figure which you named previously?

A. Correct.

Q. Coming now to equipment covered by ICC accounts 51 to 58, inclusive, tell us how the cost of reproduction of the equipment belonging to the debtor was arrived at.

A. I determined the cost of reproduction new of equipment in a manner similar to that used in determining the cost of reproduction new of the road accounts—that is to say, I took figures compiled by the Bureau of Valuation showing the money in each equipment account they had previously reduced to the 1910-14 price level and trended this money by the use of indices or multipliers to December 31, 1938. This figure, then, represented the cost of reproduction new of equipment in existence as of December, 1935, priced to December 31, 1938.

Q. State whether or not you determined the cost of reproduction new of all equipment belonging to the debtor.

A. I ascertained the cost of reproduction new of all equipment belonging to the debtor company as of December 31, 1935, priced as of December 31, 1938, merely as a step in obtaining the cost of reproduction less depreciation.

Q. What did you determine to be the cost of reproduction [fol. 1244] new of the equipment belonging to the debtor on December 31, 1935, priced as of December 31, 1938?

A. 68,661,095.

Q. Dollars?

A. Dollars.

Q. Tell us how you developed the prices which you used in determining the cost of reproduction new of this equipment as of December 31, 1938.

A. All equipment on hand on valuation date, that is, June 30, 1919, was priced by the Bureau of Valuation on the basis of 1910-14 prices as heretofore explained. These prices were checked by me and with the exception hereinafter noted were accepted by us as proper for use in computing cost of reproduction new of our equipment as of June 30, 1919. All additions and betterments to these equipment accounts for the period June 30, 1919, to December 31, 1935, were repriced by the Bureau of Valuation or trended to the 1910-14 price base. From a study of 1938 prices as above explained, an index or multiplier was developed and by the use of this index or multiplier the money in the equipment account as of December 31, 1935, was trended to 1938 prices.

Q. Please tell us the method you used in determining the figure of $29,129,121, which is shown on Debtor's Exhibit 1 as the cost of reproduction less depreciation of this equipment as of December 31, 1938.

A. I ascertained the condition per cent of our equipment by taking into account the observed condition per cent stated by the Bureau of Valuation as of December 31, 1935. I also took into account extraordinary expenditures we had made for deferred maintenance of equipment during the years 1936, 1937, and 1938, and found a figure for cost of reproduction new of equipment in existence as of De- [fol. 1245] cember 31, 1935, priced as of December 31, 1938, of $29,873,489. To this figure I added the net changes in the equipment accounts resulting from retirement of old equipment and purchases of new equipment for the years

1936, 1937, and 1938. This amount I found to be $2,766,336, giving a total of $32,639,825. I then deducted accrued depreciation for the years 1936, 1937, and 1938, amounting to $3,310,704, and found the net cost of reproduction, less depreciation, of equipment as of December 31, 1938, to be the figure shown in this exhibit, that is, $29,129,121.

Q. In that answer you spoke of $29,873,489 as being the cost of reproduction new of equipment in existence on December 31, 1935, priced as of December 31, 1938. Is that correct, or is it cost of reproduction new less depreciation?

A. Cost of reproduction new less depreciation.

Mr. Goree: Debtor now offers in evidence Debtor's Exhibit No. 1.

The Court: Is there any objection? If not, it will be admitted.

Q. Have you prepared an estimate of the cost of reproduction new of all properties of The Rio Grande Junction Railway except Account 2, Lands for Transportation Purposes?

A. I have.

(Thereupon a paper was marked for identification Debtor's Exhibit 2.)

Q. I hand you paper, which for identification has been marked Debtor's Exhibit 2. Tell us what that paper represents.

A. It first shows an estimate of the cost of reproduction new of units of property as of December 31, 1932, priced [fol. 1246] as of December 31, 1938. This figure amounts to $4,751,301. To this has been added the net cost of additions and betterments made during the period January 1, 1933, to December 31, 1938, amounting to $479,881, making a total of $5,231,182 for the cost of reproduction new of the road accounts, except land, as of December 31, 1938. The value of lands for the period ending December 31, 1938, is then set forth in the amount of $69,384.

Q. Now, Mr. Lightburn, where is the Rio Grande Junction Railway located?

A. The termini are at Rifle and Grand Junction.

Q. Rifle and Grand Junction, Colorado?

A. Yes, sir.

Q. And they connect with what road at Rifle?

A. The Denver and Rio Grande Western at Rifle, and again with the Denver and Rio Grande Western at Grand Junction.

Q. Referring again to Debtor's Exhibit 2, state whether this paper shows the result of your work in determining the cost of reproduction new of all property of The Rio Grande Junction Railway Company as stated plus the value of its land as above set forth.

A. It does.

Q. Tell me the method used by you in arriving at the figures shown in this exhibit as the cost of reproduction new of the items of property in all of the road accounts except land.

A. I employed the same methods used in determining the cost of reproduction new of the road accounts, except land, as I did for The Denver and Rio Grande Western Railroad.

Q. Who was in charge of the valuation work of The Rio Grande Junction Railway?

[fol. 1247] A. I was. The inventory was made in connection with that of the debtor.

Q. What does the figure $5,300,566 as shown on Debtor's Exhibit 2 represent?

A. It represents the total cost of reproduction new of road accounts, excluding lands, as of December 31, 1938, plus the values of lands as of December 31, 1938, of the Rio Grande Junction Railway.

Mr. Goree: The debtor now offers in evidence Debtor's Exhibit 2.

The Court: Any objection? If not, it will be admitted.

Mr. Goree: For the purpose of the record, I will say that the value of the Rio Grande Junction Railway Company shown on Debtor's Exhibit 2 is not included in the cost of reproduction of the Denver and Rio Grande Western Railroad, as shown on Debtor's Exhibit 1. I will later introduce an exhibit which summarizes these different costs and values.

Q. Mr. Lightburn, where is the Goshen Valley Railway located?

A. It is a branch line over in Utah extending into one of the mining districts, close to the Tintic Mining District.

Q. What are its termini?

A. It runs from Pearl Junction, a point on the main line of the Rio Grande, to Dividend.

Q. That is on the main line of the debtor, Pearl Junction, is that right?

A. Yes, sir, it is.

Q. Have you determined the cost of reproduction new of the items of property in the road accounts of the Goshen Valley Railway Company, except lands?

A. I have.

(Thereupon a paper was marked for identification Debtor's Exhibit 3.)

Q. I hand you a paper which has been identified as Debtor's Exhibit 3. Is the result of that work shown on that exhibit?

[fol. 1248]

A. It is.

Q. Tell us the manner in which that work was done.

A. The Goshen Valley Railroad Company was not built at the time of the ICC inventory. Therefore, all quantities and costs were reported to the Bureau of Valuation following construction, in accordance with Valuation Order No. 3 of the ICC. Thereafter the Bureau reduced our reported costs to a 1928-1927 price base, rather than the 1910-14 price base. We reviewed this method of procedure and ascertained that it produced a result that was approximately correct for the pricing period 1923-1927; at least, it was certainly not too high. In developing multipliers for the road accounts, except land, for Goshen Valley we determined the relation between the price level in 1923-1927 and that of December 31, 1938, and applied these multipliers to the units of property of the Goshen Valley. Application of multipliers produced a cost of reproduction new as of December 31, 1932, of $360,777. Net additions and betterments for the period January 1, 1933, to 1938 are recorded in the amount of $208, which makes the total cost of reproduction new as of December 31, 1938, $360,985.

Q. Please tell us how the figure $3129 shown as the value of the lands of the Goshen Valley Railroad was arrived at.

A. This figure is a result of a joint reappraisal of the lands of the Goshen Valley as of 1937 by representatives of the Bureau of Valuation and the debtor.

The Court: How long is that railroad?

The Witness: It is six or seven miles.

[fol. 1249] Q. Then what does the figure $364,114 shown on Debtor's Exhibit No. 3 represent?

A. The cost of reproduction new of the road accounts, except fuel, of the Goshen Valley as of December 31, 1938, plus the appraised value of the lands of that carrier.

Q. You state that the lands were appraised in 1937. What would you say as to any change in their value between the date of their appraisal in 1937 and December 31, 1938?

A. The change in value, if any, would be negligible.

Mr. Goree: If Your Honor please, the debtor now offers in evidence Debtor's Exhibit 3.

The Court: It will be admitted, if there is no objection.

Q. Mr. Lightburn, we come now to the Denver and Salt Lake Western Railroad Company. Tell us, please, where that railroad is and its termini.

A. The termini are Bond, or a point near Bond known as Orested, on the Denver and Salt Lake, and Dotsero, about eighteen miles this side of Glenwood Springs on the Denver and Rio Grande Western.

Q. Both of these points are in the State of Colorado, of course?

A. Yes, sir.

Q. How long is that line?

A. Just a little over 37 miles.

Q. When was it built?

A. In 1934.

Q. State whether you have prepared an estimate of the cost of reproduction new of all properties of the Denver and Salt Lake Western Railroad Company.

A. I have, with the exception of Lands for Transportation Purposes which is known as ICC Account No. 2.

[fol. 1250] Q. Tell us what consideration, if any, you gave to lands owned by the Denver and Salt Lake Western Railroad.

A. I based my estimate of present value of lands on the joint reappraisal that we made with the representatives of the Bureau of Valuation in 1937.

Q. Have you prepared a statement showing the result of your study and work along this line?.

A. I have.

(Thereupon a paper was marked for identification Debtor's Exhibit 4.)

Q. I hand you a paper which for identification has been marked Debtor's Exhibit No. 4. Please tell us what that paper represents.

A. The first figure appearing on this exhibit—that is, $4,597,003—is the estimated cost of reproduction new of road accounts of the Denver and Salt Lake Western, except land.

Q. How was this figure obtained?

A. Recorded costs of the property as reported by the carrier to the Interstate Commerce Commission for all road accounts, except land, were trended from the date of construction in June 1934, to December 31, 1938.

Q. When the original cost figures were trended to December 31, 1938, as stated by you, what result was obtained?

A. A cost of reproduction new of $4,597,003 was found for units of property as constructed and turned over for operation June 16, 1934, priced as of December 31, 1938.

Q. What does the item "Additions and Betterments, $106,188" represent?

A. It represents recorded costs of additions and betterments made to the property between June 16, 1934, and December 31, 1938.

[fol. 1251] Q. From your familiarity with prices and your studies of the trends of prices, as heretofore explained, would you say that the cost of these additions and betterments would be increased or decreased if this cost figure of $106,188 had been trended to December 31, 1938?

A. The difference between the recorded cost of these improvements and their cost of reproduction as of December 31, 1938, would be negligible.

Q. Explain the item, "Land, $12,719."

A. This figure resulted from the joint reappraisement made by a representative of the Bureau of Valuation and the debtor in 1937.

Q. What would you say as to the difference, if any, in the value of these lands in 1937 and on December 31, 1938?

A. There would be little, if any, difference in their value between 1937 and December 31, 1938.

Q. And December, 1938?

A. December, 1938.

Q. State whether or not you considered the figure of $12,719 a fair appraisal of the valuation of the lands of the Denver and Salt Lake Western Railroad as of December 31, 1938.

A. It is a fair appraisal based on the Bureau's methods of land appraisal, that is, comparing the lands to similar adjacent lands. I will say, however, that the figures are much less than the cost of the lands to us at the date of acquisition, less than five years previous.

By the Court:

Q. In other words, it is your testimony that that strip of land from Dotsero to Bond is only worth $12,719?

A. That, your Honor, is the way it has been appraised by [fol. 1252] the Bureau of Valuation. Its actual cost was something over $93,000.

Q. This is not your valuation. You are testifying to that of the ICC?

A. I am testifying that is a fair figure of appraisal based on their methods of comparing a right-of-way with similar adjacent lands, because, as we all know, similar adjacent lands up there are not worth very much in that rough country. It does not represent anything at all of a relationship to its cost.

Q. Was there any condemnation?

A. We had very little condemnation. We purchased it just as any railroad purchases land. When people know that they need the land, they pay what people think they can get for it.

(Thereupon a recess was taken until 2 o'clock p. m.)

[fol. 1253] Pursuant to recess the following proceedings were had at two o'clock p. m.:

C. M. LIGHTBURN resumed the stand for further

Direct examination.

By Mr. Goree:

Q. Mr. Lightburn, this morning you testified about the length and termini of the Goshen Valley Railroad Com-

pany. Have you refreshed your mind on that, and wish to make any correction?

A. Well, my answer I think is correct, but someone thought that it had not been understood by the reporter. I said the length of the Goshen Valley was between six and seven miles. It is actually—the main spur is 6.52 miles. There is another spur called the King spur that is 2.27 miles long.

Q. Do they lead from the main line of The Denver and Rio Grande or from some branch?

A. They lead from the main line of the Tintic branch.

Mr. Goree: If your Honor please, just before adjournment I had offered in evidence Debtor's Exhibit 4 to which there was no objection, but the reporter tells me that your Honor did not rule on it, and I would just like to have the record show it was admitted.

The Court: It will be admitted if there is no objection.

Mr. Goree: That is the Denver and Salt Lake Western.

Q. Now, Mr. Lightburn, on Debtor's Exhibits 1, 3 and 4 I notice that no equipment is shown. Explain this omission, please.

[fol. 1254] A. The Rio Grande Junction, the Goshen Valley and the Denver and Salt Lake Western own no equipment.

Q. In your opinion do the figures heretofore submitted by you as the cost of reproduction of all properties, except land, of these carriers, plus the values of their lands, and, in the case of the Denver and Rio Grande Western, plus the value of its equipment, completely represent the value of their assets?

A. No.

Q. Explain your answer.

A. In my opinion the increments and elements of value residing in these properties should be added in the determining of their total value as operating properties.

Q. What are the increments or elements of value to which you refer?

A. The debtor, for example, has the right to use telegraph lines along its right-of-way and enjoys an easement right in these lines that is nowhere included in cost of reproduction. In my opinion the value of this right should be no less than the estimated cost of reproduction of improvements turned over to the Western Union Telegraph

Company under an agreement dated August 22, 1917. The estimated cost of reproduction of these improvements is at least $300,000. The debtor possesses valuable water rights and lands acquired in irrigated territory that have been under-appraised by the Bureau of Valuation. My estimate for this increment is $465,559. The full value of these water rights was not included in the cost of reproduction figures heretofore given because there was a disagreement between the debtor and the Bureau of Valuation [fol. 1255] as to principle in the manner in which they should be inventoried. Similarly, the debtor's lines occupy many miles of mountain passes, gorges and canyons. These rights-of-way are especially favorable and advantageous for railroad uses on account of their peculiar topography and strategic location. No adequate value of these canyon rights-of-way have been allowed by the Interstate Commerce Commission. In my opinion, not less than $3,108,000 should be added as the value of these canyon rights in excess of the amounts shown as the value of lands in the exhibit heretofore presented. The additional values of these canyon rights are not included in those exhibits because of a disagrement between the debtor and the Bureau of Valuation. There was also a disagreement between the debtor and the Bureau of Valuation——

Q. Well, what was that disagreement between the debtor and the Bureau of Valuation that you spoke of? Was that as to the principle as to the manner in which they should be appraised?

A. Surely. It was represented in the testimony I gave this morning regarding the Dotsero Cut-off. They appraised the lands adjacent to these canyons at a nominal figure. We claim that those canyons are worth more than that.

Q. Continue, please.

A. The figures which I have included in Debtor's Exhibit No. 1 on account of equipment for the debtor follows the principle approved by the Bureau of Valuation, but in my opinion an additional value of not less than $237,000 should [fol. 1256] be added to the cost of reproduction less depreciation of equipment.

Q. Was that because of a disagreement between the Debtor and the Bureau of Valuation as to the manner in which certain narrow gauge equipment should be appraised?

A. It was.

Q. Proceed, please.

A. All these increments of value should properly be allocated to reproduction costs or to values of lands of the debtor.

(Thereupon a document was marked Debtor's Exhibit 5 for identification.)

Q. In your opinion, do the costs of reproduction as shown by your various exhibits, plus the increments of value just mentioned, adequately cover the value of the properties of these carriers?

A. No.

Q. Why not?

A. There are other elements of value inherent in these railroad properties which should be added in order to determine their final value.

Q. What are these other elements of value that you mention? Explain them in detail.

A. The cost of development of the property, going concern value and development of business. If the properties of the carriers were reproduced new they could not be developed in the way that the properties of the carriers now are, and to develop them to the present point of efficiency would entail considerable expense. In addition to the cost of reproduction of the physical property of the Rio Grande as it exists at the present time, it would be necessary to incur certain expenditures in the development thereof, [fol. 1257] such as the excess cost over and above ordinary or normal maintenance costs during the early years of operation, the excess cost of opening out ditches and keeping them open during the early period of operation, and replacing and maintaining the slopes of cuts and fills, the cost of relocating and adjusting waterways and other roadway openings in conformity with experience gained as to the proper location and size of these openings which became manifest after the beginning of operation; the cost of developing gravel pits; the cost of testing for and developing suitable and adequate water supply based on the experience requirements of early operation; excess costs made necessary during the first years of operation by the occurrence of floods, rock slides, wash-ins and snow slides, and the extraordinary cost of protecting and policing tracks and roadbed through the mountains during the time the

roadbed is unstable and more vulnerable to the hazard of natural causes; the cost, after the beginning of operation, of raising grades and effecting line and channel changes; the excess cost of building snow fences and other protective devices in excess of what similar construction would cost under normal conditions; the excess cost of designing, determining and evolving the proper motive power and other equipment to meet operating conditions peculiar to the territory; the cost of determining the proper location, character and capacity of engine and division terminals, helper stations, and the cost of determining proper locations for passing tracks and other side tracks. Another item is the excessive cost of operating the newly constructed roadbed. The full service of locomotives cannot be obtained, [fol. 1258] and costs of train movements are manifestly excessive on a new track. All these are truly development costs, and we maintain that on this account a sum of no less than $9,000,000 should be considered as an element of value as of December 31, 1938. As to "Going Concern Value," assuming that the physical property of the Denver and Rio Grande has been constructed new and ready for operation as of any particular date, which is the assumption under the reproduction theory of the Bureau of Valuation, it is also necessary to assume that the personnel would be assembled and trained prior to that date, ready for the operation of the new system. It takes time and much effort to assemble, train and co-ordinate such a group. It would be necessary to first analyze the character, volume, origin and destination of the traffic actually to be offered for transportation as well as the potentially available traffic. Second, it would be necessary to determine the character and number of officers and employees necessary to handle the business and maintain the property. During this organization period it would be necessary to design, publish and distribute time tables, tariffs, fares, correspondence, accounting and other classes of forms, leases and agreements, maintenance standards, prepare and install rules, instructions and practices for all concerned, and to codify and arrange for compliance with all regulatory acts of political divisions. The cost that would have to be met to get reproduced property into effectual operation as a common carrier would be not less than $7,000,000. We think that on that account an additional element of value of not less [fol. 1259] than that amount exists. As to development of

business; the development of the freight and passenger traffic of the debtor as it existed on December 31, 1938, would represent a substantial outlay; which in my opinion would not be less than $550,000. This is an additional element of value which should be considered in arriving at a valuation of the properties of the debtor, and I am of the opinion that on that account the sum of $550,000 should be added.

(Thereupon a paper was marked for identification as Debtor's Exhibit No. 6.)

Q. Has the Debtor any other assets which should be considered in placing a value upon these properties?

A. Yes, it has various stockholding interests in or has made advances to certain companies that are necessary to its operation. Among these are terminal companies, motorway bus and truck lines, The Railway Express Agency, The Denver Market and Produce Terminal, Inc., and The Utah Fuel Company. The detail of this is shown on Debtor's Exhibit No. 6.

Q. Without taking into consideration the values of the stockholding interests in and advances to the companies just mentioned, what would you say is the fair combined value of the properties of the debtor, of the Rio Grande Junction Railway, of the Goshen Valley Railroad Company, and of the Denver and Salt Lake Western Railroad?

A. $206,406,318.

Q. This value is as of what date?

A. December 31, 1938.

Q. Why was this date chosen by you?

A. Because of its proximity to the date of the plan, and because it was the latest date for which adequate and re-
[fol. 1260] liable cost data were available.

Mr. Goree: The debtor now moves that Debtor's Exhibit No. 5 be admitted in evidence, Your Honor.

The Court: It may be admitted.

(Debtor's Exhibit No. 5 is attached hereto and made a part hereof.)

Q. In arriving at this figure, have you added anything on account of the interests in or advances to the various companies listed in Debtor's Exhibit No. 6?

A. I have not.

Q. Are you able to do this now?

A. No, I am not.

Q. Why not?

A. The time for preparing this was so short and any appraisal of these interests would entail so much work that I deemed it best not to attempt it. In any event, these stockholding interests and credits would increase the value which I have named for the properties of the Debtor.

Q. When and if their values are ascertained, what would you say should be done with those values?

A. They should be added to the values of the property of the Debtor which I have stated.

Mr. Goree: At this time, if Your Honor please, the Debtor moves that Debtor's Exhibit No. 6 be admitted in evidence.

The Court: Without objection, it may be admitted.

Q. In placing a value upon the properties of the Debtor have you given any consideration to cash on hand, materials and supplies, and so forth?

A. Yes, I have considered them, but current assets and current liabilities approximately offset one another so I [fol. 1261] did not think there was any net value to be added on this account.

Mr. Hodges: May it please the Court, at this point in Mr. Lightburn's testimony, while Debtor's Exhibit No. 6 is being introduced, I call attention to the Utah Fuel Company stock listed at a book value of one dollar, and I call the attention of the Court to the fact that the record certified here by the Interstate Commerce Commission carries the testimony of expert engineers as to the value of the Utah Fuel Company's stock, placing a value of $4,600,000, approximately, on the Utah Fuel Company's Stock.

(Thereupon a paper was marked for identification Debtor's Exhibit No. 7.)

Q. Have you attempted to allocate the cost of reproduction of physical property of The Denver and Rio Grande Western Railroad Company, to the various mortgage divisions of that Debtor? When I say the estimated cost of reproduction of the physical property, I mean the estimated cost of reproduction of the road accounts, plus the estimated costs of reproduction, less depreciation of equipment, plus the value of lands as of December 31, 1938.

A. I have.

Q. I hand you Debtor's Exhibit No. 7. What is that paper?

A. The first column is an allocation of the costs of reproduction, new, of the units of property in the road accounts as of December 31, 1932, priced as of December 31, 1938. The total is the same figure appearing in Debtor's Exhibit No. 1. The second column shows additions and betterments applicable to the road accounts. The third column is the total of the road accounts as of December 31, [fol. 1262] 1938. The value of the land is set forth in similar manner, the first column being 1937 appraisal about which I have heretofore testified. The following column shows additions and retirements to December 31, 1938, and the following column shows the total land values as of December 31, 1938. The equipment column shows an approximate allocation of units of equipment to the several mortgages as of December 31, 1938. The total shows the property in all accounts as of December 31, 1938.

Q. Tell us how the costs in the road accounts were divided among the several mortgage divisions:

A. This was done by taking the valuation sections or parts of valuation sections of the road covered by each of the several mortgages.

Q. Say whether the costs in the road accounts assigned to the several mortgages are those inherent in the property on which the respective mortgages are first liens.

A. They are.

Q. The fact that the Debtor's line of railroad was divided for valuation purposes into valuation sections made this allocation comparatively easy, did it not?

A. It did.

Q. Tell us now how the land values were divided.

A. The land values were divided in the same manner as the road accounts were allocated; that is, the valuation sections or parts of valuation sections upon which the sevral mortgages were first liens respectively.

Q. What do the equipment costs used in this exhibit represents?

A. The cost of reproduction, less depreciation, of the equipment as of December 31, 1938.

Q. How were these costs divided among the several mortgage divisions?

A. It was impossible to obtain accurate allocation figures subsequent to 1935, so percentages were obtained on the [fol. 1263] 1935 allocation figures and those percentages were applied to the total valuation of equipment figure previously testified to for December 31, 1938, which appears as a total figure for the equipment in this column. Subsequent adjustments resulting from agreements between the bondholders of the various issues were reflected as accurately as possible. While these allocation figures are at best an approximation, they are the best approximation *that we could* make, and the total equipment figure is correct as previously testified to.

Mr. Goree: If the Court please, we offer in evidence Debtor's Exhibit No. 7.

Mr. Anderson: If Your Honor please, we object to the introduction of that exhibit on the ground that it constitutes no basis of ascertainment of commercial value or reorganization value. We have let the general figures go in without objection on the views of the Debtor, but when it comes to undertaking the distributions between bondholders' and mortgage divisions, both roadway and equipment, we do not think they are applicable, and we do not think they are of any value whatever for that purpose. We, therefore, object to it, and we do not think the distribution is sound; in other words, the witness himself has said it is only an aproximation, and an approximation is not sound.

Mr. Fitzgibbon: If the Court please, I should like to enter our objection, and also state this, with regard to the matter of equipment: There is some sort of an understanding among the bondholders, which has been referred to here. The Trustee that I represent has never been a party [fol. 1264] to that, and as a matter of fact, contests that allocation; therefore, we say there is really no basis as made in the allocation of that equipment.

Mr. Anderson: I move to strike out the allocation of equipment, if the exhibit is admitted, and I object to it entirely.

Mr. Heath: If the Court please, our company as Trustee of the first mortgage, would like to offer the same objection.

Mr. Hodges: The introduction of this exhibit is not of great moment to the Debtor. It is introduced because it may be useful to the parties in this cause before they get through, as it is a correct allocation, and stated to be, of

road construction. Unfortunately, the impossible cannot be done. Equipment cannot be allocated at this moment, nor until the record is finally settled, as to who is entitled to the typical items of equipment. There was an agreement between some of the bondholding representatives, which seems to have been relied upon by the Interstate Commerce Commission. This exhibit adheres to that as nearly as possible, although there are some additions to equipment since the date of that agreement and the allocation by the ICC which make it somewhat uncertain. Now, it is true that the bond issues represented by the Guaranty Trust Company and possibly the Hanover—I don't know whether there was any contest between the Hanover and any of the other Trustees as to equipment—but I think it is true that those bond issues represented by the Guaranty did not agree to the allocation, but there is still the legal question [fol. 1265] for this Court to decide as to what the proper allocation shall be. Of course, the Court is not bound by this exhibit. This exhibit is tendered in good faith as something that we think is useful, and perhaps the Court will find it useful, and it is a useful collection of statistics on the basis of this witness' testimony as to the total valuation.

The Court: It will be admitted, the probative value of it to be determined later. Proceed.

Mr. Goree: That is all the examination in chief.

The Court: Mr. Hodges, you claim the allocation of equipment was never agreed to?

Mr. Hodges: I suppose it would not be sound to claim it has been agreed to. There was an understanding as between certain parties interested which seemed to carry that far, but that cannot bind other parties who did not agree.

The Court: What evidence is there of that agreement?

Mr. Hodges: That is in the briefs before the Interstate Commerce Commission, and I think there is a reference to it in the Interstate Commerce Commission's report.

I want to ask the witness one question:

By Mr. Hodges:

Q. Have you examined these reproduction value figures to determine the result if you carried forward two years from 1938, or if you carried your period back two years from the time when you began it, what effect it would have on the valuation?

A. Construction costs are ascending right at the present time. They have ascended almost steadily since 1937; and I believe that the December 31, 1938, value is a fair average of the period of approximately four years. To go back [fol. 1266] before that time, why, that is a different story.

Mr. Anderson: May I ask the witness a question?

The Court: Surely.

Cross-examination.

By Mr. Anderson:

Q. As I understand, your valuation here has followed generally the process followed by the Interstate Commerce Commission in arriving at value for rate making purposes; is that correct?

A. That is correct, yes, sir.

Q. You do not contend at all that the value as stated by you upon the formula arrived at by the use of the formula of the ICC is any representation of the commercial value of this property or of its value for reorganization purposes, do you?

Mr. Hodges: I object to the question as calling——

Mr. Anderson: I have the right to go to the bottom of the well.

Mr. Hodges: You have a right to go to the bottom of the right well, but not the wrong well. This witness has testified to the reproduction costs of this property and its accrued depreciation. The question which your Honor has to consider and determine is the solvency of this Debtor. This witness does not pretend to tell your Honor what the answer is to that question, nor is his opinion of any concern to your Honor. He has testified to these basic facts that are essential for the establishment of reproduction costs, and accrued depreciation is a material thing. It is for your Honor to determine whether that represents the material value to be considered, and the issues in this case could not be controlled by the witness' opinion as to whether that [fol. 1267] value was of any importance.

The Court: What is the question?

Mr. Anderson: I might state, to save time, I asked him if he contended that this valuation which he had made on the formula of the ICC was related in any way to the value

of the property for commercial purposes or for reorganization purposes. I want to see if he meant that the two applied, because he uses the term "value" very often without designating what he means.

The Court: The objection is overruled.

Mr. Hodges: I save an exception.

A. The value, Colonel Anderson, was determined generally upon the method of procedure used by the Interstate Commerce Commission, Bureau of Valuation. That method has been used and might be used to determine the commercial value of the property. I have known it to be used.

Q. When and where?

A. In the purchase of property that the Debtor company has purchased heretofore we used approximately that value to determine how much we would pay for the property.

Q. How much you would pay for what kind of property?

A. Railroad property.

Q. Well, I mean land——

A. Land, rails, roadbed.

Q. You mean, for the purchase of a road, that you took the ICC value as representing the commercial value?

A. We used the same methods to determine it; we used the same methods in determining values for contract purposes upon which we earned. On that basis I would say it would be useful as a means of determining commercial value.

Q. Then do I understand you to say that when you use [fol. 1268] the term "ICC value" here, that you mean commercial value or mean value for reorganization purposes of this property?

A. I perhaps misunderstood you, but I thought we were discussing the method of approach.

Q. No; I asked you if you meant your term "value," frequently used throughout without any limitation, to apply to reorganization value or commercial value of property.

A. My answer is intended to mean that it could be and has been and is being used as a means of determining——

Q. That does not answer my question. I asked you what you meant by it. I am talking about your evidence, not what somebody else said. Is your testimony confined entirely to reproduction new where you use the cost less depreciation?

A. Plus these other items of value, yes, sir.

Q. That is all you were talking about?

A. Yes, sir.

Q. And you are not undertaking to define or to state commercial or reorganization values, are you?

Mr. Hodges: I think that is a most unfair procedure that you are asking this witness to indulge in.

Mr. Anderson: It is proper cross-examination.

Mr. Hodges: It is not proper cross-examination at all.

Mr. Anderson: I am trying to get what he is talking about.

Mr. Hodges: He has told you what he is talking about. You are asking for his opinion as to the relevancy of reproduction cost in determining the question which the Court has to determine.

Mr. Anderson: I submit I did not ask his opinion upon [fol. 1269] the testimony as to relevancy. I asked him what he meant by his term "value," which he has used over and over again, without any reference to any limitation, and I say you were confining your statement to the reproduction value as defined by the Interstate Commerce Commission for rate making purposes and you do not undertake to testify as to the commercial value or value for reorganization purposes, and I want an answer to that question. That is a perfectly legitimate question in order to interpret his evidence before the Court.

The Court: What is reorganization value? It has not been defined.

Mr. Hodges: I never saw it defined.

Mr. Anderson: I will argue that question at the proper time. The reorganization of a railroad is substantially the same as a railroad now. It is not reproduction cost less depreciation for rate making purposes, and has been so stated a number of times.

Mr. Hodges: It was stated to the contrary by Judge Coleman in the case I introduced.

Mr. Anderson: I am entitled to have the witness say what he is talking about at least.

Mr. Hodges: You are not entitled to a conclusion from this witness, and you are asking for a conclusion.

The Court: He may answer the question if he can.

A. I have endeavored to answer it. It is true that we use the methods on which the Interstate Commerce Commission

approached the matter of value when they started out to determine the value for rate making purposes, but we did [fol. 1270] not follow their methods entirely because they would probably use cost of reproduction less depreciation all the way through. We tried to find a value for the property. I don't know whether it is commercial value or reorganization value. And I will say that we have used these same methods for commercial purposes.

Q. Well, now, you have started to answer what my next question will be. You stated that you followed the ICC method of valuation for rate making purposes, in reply to my first question.

A. Not entirely, because——

Q. Now, you say you followed it in part, and did not follow it in part. That being true, I would like to know what you followed in part that you didn't follow on the formula. What did you follow there?

A. Their method of valuation for rate making purposes started out with cost of reproduction less depreciation. They allowed working capital. I didn't take cost of reproduction less depreciation. I took cost of reproduction new on the road accounts, and didn't take into account any working capital. They are the essential differences.

Q. You didn't depreciate the road at all?

A. Not at all.

Q. You just took it as if it was built today, new, absolutely new, new rails, new cross ties, new equipment, new everything. Is that right?

A. Correct.

Q. Now, what formula did you apply, if you didn't apply the ICC formula, in arriving at your value all the way through? I mean, you applied the ICC formula up to a certain point and then stopped. Now, what formula did you apply after that?

[fol. 1271] A. Well, it wasn't really a formula. We just followed their method, except we didn't use cost of reproduction less depreciation of road, for the reason that it is our theory that if a road is properly maintained, there is no depreciation in the road account.

Q. And you don't think that this road did depreciate at all from a new railroad, that a railroad built December 31, 1938, or December 31, 1932, we will say, is just as good as a new railroad; is that your idea?

A. No, that is not exactly my idea.

Q. What is your idea, if that is what you valued? You gave your value as of those dates.

A. In some places it might be better. It might be you had renewed structures and bridges. Some places might be very much worse.

Q. Can a bridge be better than a new bridge?

A. Yes, it might be better than one originally put in there and a track—

Q. I am not asking you that. You are talking about reproduction new today. Could a bridge be better than a new bridge today?

A. No.

Q. Could a track be better than a well-constructed new track today?

A. Very much so.

Q. It could be settled, you mean?

A. Yes, sir.

Q. You couldn't make it any better for construction purposes?

A. It would be better after a number of years than when you first built it.

Q. Well, the rails would be new, all the ties would be new. They would be better when they were new than after they were used. The elements of the track would be better, the only difference would be they hadn't settled as com-
[fol. 1272] pletely as an older track, but by the time they had settled they would have worn some, wouldn't they?

A. You mean the roadbed?

Q. I mean the ties and plates.

A. That is correct.

Q. They would be worn a good deal. In the next place, if there hasn't been any depreciation on your road, as compared to a new road, when your ties are not new, when the plates are worn, and the rails half worn out—

A. One day after you built a new road it would be different than when you built it, and—

Q. I know that—

A. —one year after you built it it would be different than what it was when you built it.

Q. I know that, but I am asking you if there is any depreciation in the elements that make up the roadbed.

A. Certainly.

Q. You didn't take any depreciation in making this up of any kind, did you?

A. That is correct.

Q. Let us take up the question of equipment. You said that in the case of equipment you took the cost of the equipment new less depreciation, did you not?

A. Yes.

Q. What depreciation rules or orders did you follow in taking that depreciation?

A. I determined the per cent of depreciation used by the Bureau of Valuation in making their element of value for December 31, 1935, and used that same per cent, condition per cent, which was based on observation at that time by the Interstate Commerce Commission.

Q. You mean that the Interstate Commerce Commission in Washington observed this railroad, observed every car on it?

A. They came out and made an inspection. That was their—

Q. How long did it take to make that inspection?

[fol. 1273] A. Oh, it was a matter of several weeks.

Q. You know that the Interstate Commerce Commission changed its rates of depreciation in 1935, and again in 1938, didn't they?

A. That is correct.

Q. Well, a good deal of this equipment runs way back of 1935 and 1938, doesn't it?

A. It does, yes, sir.

Q. Now, is it not a fact that the rate of depreciation established by the Commission and used by the Bureau of Valuation in 1935 and 1938 not only provided for the depreciation of the equipment during the remaining life of the equipment, but also undertook to provide for setting up a depreciation, which, over the remaining life of the equipment, would wipe out the deficiency depreciation on account of charging too low rates before that date? Do I make myself clear? It is a little involved.

A. I am not familiar with their procedure in that respect.

Q. Then you don't know whether the depreciation you put in here is actual depreciation or whether it is a rate of depreciation which anticipates ten years of use before the depreciation is really covered, do you?

A. It certainly looked to me like a very low condition per cent, but considering the age of some of our equipment, it looked like it was about right.

Q. That is what you put down, you just considered the age, and in general it looked all right to you?

A. I took it as a starting point, because they had made an inspection, and I presumed—

Q. But you didn't take into consideration the orders of the Commission directing the method by which depreci- [fol. 1274] ation should be charged, which undertakes to take up over a period of years in the future deficiency depreciation in the past? You didn't take that into consideration at all, did you?

A. No.

Q. Now, let me ask you, did you take into consideration the functional obsolescence of this equipment?

A. I have no doubt but what it was taken into consideration by the Bureau, and I simply followed their figures.

Q. You didn't yourself, and you don't know if they took it into consideration, do you?

A. Yes, I am quite sure they did.

Q. How do you know they took it into consideration? Just how do you know?

A. Because of a number of arguments I had with them over equipment. According to their theory, it wouldn't be in existence, but it was still running, and I know their theory of depreciation of equipment takes it into account.

Q. I am talking about not the physical depreciation of equipment, in which they set up an arbitrary rule that the equipment would be retired in so many years by use. That doesn't always work out. I am not talking about that. I am talking about functional obsolescence, which is something the Interstate Commerce Commission doesn't always figure, if it ever does, on equipment.

A. I don't—

Mr. Wood: I would like to object to the question, on the ground that there has been no testimony here as to what functional obsolescence is. Without such testimony I think the question is improper.

Mr. Anderson: I assumed that everybody here knows [fol. 1275] what functional obsolescence is. You may have a 30-ton car that is no longer useful for the service of the railroad. It may be in perfectly good condition, but

functionally obsolescence makes it useless to the railroad.

A. switch may be in perfectly good condition, but on account of putting in heavier tracks, functional obsolescence makes it useless. I thought everybody here knew the meaning of functional obsolescence. I explained the meaning, and I will be glad to put an expert on the stand to explain it further.

Q. You know what I am talking about, don't you, Mr. Lightburn?

A. Yes, sir.

Mr. Wood: There has been no testimony about how much equipment, if any equipment, is functionally obsolete.

Mr. Anderson: I didn't say it was. I asked the question whether or not it had been taken into consideration?

Q. You answered that you did not take it into consideration?

A. That is correct.

Q. Now, in arriving at the value of the equipment, assuming as you say you did, that the ICC formula applies, what did you do beyond applying the formula to that equipment?

A. I studied our costs of extraordinary equipment maintenance for the past five years and determined that there had been a considerable excess cost of maintenance put into the equipment, that should bring it up, and I added that excess money spent for maintenance to bring the value that I had fixed because of depreciation up to where I thought it ought to be.

Q. Well, but your excess costs of maintenance alone only overcome deficiency and maintenance before that, won't it?

A. Yes.

[fol. 1276] Q. Why did you add an additional value, if the property was properly maintained? A valueless depreciation is what you have here.

A. I was trying to arrive at the approximate condition per cent.

Q. You sat in your office and valued that equipment on those formulas you described, did you?

A. Yes, sir.

Q. You didn't personally inspect that equipment, did you?

A. I did not.

Q. Those figures you set up here are your theoretical figures arrived at by taking the ICC figures, which you assumed to be correct, and then coming to the—not inspecting the property at all, and adding to the value of the increased cost of maintenance which recently accrued, is that correct?

A. That is it.

Q. All right. Let us take some of these items that you say ought to be added after your exhausted the ICC figures, as I understand it, as referred to on your Exhibit No. 5. What about these telegraph lines? Who owned them?

A. The Western Union Telegraph Company.

Q. How long have they owned them?

A. Since 1917.

Q. 1917?

A. Yes.

Q. Well, you put down here telegraph lines as part of the property of the Debtor. You are talking about telegraph lines, things that the Western Union owned?

A. No, not exactly that. We claim and contend that we enjoy and possess an easement on those lines, by reason of the fact that we gave them to the telegraph company under certain circumstances, and had retained the right to have wire space on the poles.

[fol. 1277] Q. Isn't that the right of every railroad under every Western Union contract in existence?

A. I imagine——

Q. As far as you know?

A. Yes, sir.

Q. Isn't that something you pay for and charge whatever it costs and charge it to operating expense?

A. No, we don't charge it to operating expenses.

Q. Isn't your telegraph contract part of your operating expense?

A. No, but this thing I am talking about is an equity that we actually paid for. We bought it, and it was in our capital account at one time.

Q. But is out now?

A. Yes.

Q. The I. C. C. wouldn't let you put it back in there, would they?

A. No.

Q. Yet you put in $300,000 for something you don't own, the I. C. C. wouldn't let you use as capital, just a contract right to use the telegraph lines?

A. Yes, sir.

Q. How long does the contract run?

A. I couldn't tell you; I don't remember.

Q. Yet you valued it, not knowing how long it would run? It might expire next week?

A. I assume that any extension would give us the same right we have now.

Q. You wouldn't undertake to ask this Court to find a value on that assumption, would you, that you could get the same kind of contract when it expired?

A. No, I wouldn't.

Mr. Hodges: I object to that question, that he could get the same sort of contract.

Mr. Anderson: I stand by the witness' statement.

Mr. Hodges: You put the words in the witness' mouth.

[fol. 1278] Mr. Anderson: On cross-examination I have a right to put words in the witness' mouth.

Mr. Hodges: Not if they are untrue. I don't know how they do it in Virginia.

Mr. Anderson: They do it right in Virginia.

Q. Now, let us take up water rights. Describe those water rights a little more fully, will you?

A. There are two parts to that figure there. The first part is what we contend our water rights are worth, the water rights that we have to take water from streams and springs and from other sources and use in our locomotives.

Q. Do you pay anything for the right to take that water out of springs and streams?

A. In some cases we bought them and paid substantial amounts for them, in most——

Q. I mean do you pay anything currently?

A. No.

Q. Are they carried in your capital account?

A. Well, those that we paid money for certainly are.

Q. How many of those did you pay money for, and how much?

A. I haven't the figures here.

Q. How did you arrive at $465,000, if you don't know what you had in the capital account, what you paid for them?

A. Just in the same manner we arrived at the value of our lands, by comparing them with the right to use the

same amount of water at any place where we knew the value of the water.

Q. Do you have to pay for that water currently by the year, or rent it?

A. No, sir.

Q. Just your right to take water out of a stream or river or spring, for which you in many cases paid nothing, but [fol. 1279] acquired it probably by use, and in other cases you bought it, and you don't know how much you bought. You haven't valued them on the ground, you just put down $465,000 as representing their value, is that right?

A. No, part of that figure that we claim for water rights is about $150,000, and I have in my files full support of that figure, based upon the worth of water rights in the country that we traverse.

Q. You don't know whether the I. C. C. ever allowed you to put them in your capital account or not, do you?

A. I said I was quite sure that some of it wasn't in the capital account. Wherever we bought ditch rights, water rights, they are certainly in the capital account.

Q. $150,000. Where is the balance? The balance of your claim was disallowed by the Bureau of Valuation.

A. We claim that we should have irrigated land value where we went through irrigated lands, and they gave us a value of lands without water rights, and we knew that under the reproduction theory, if we went through irrigated lands, we pay irrigated land prices for the water rights.

Q. How do you arrive at the value?

A. I have explained that, just on the basis of their admitted value of irrigated lands.

Q. But the value was not allowed in the valuation of the I. C. C.

A. That is correct.

Q. You took the valuation of the I. C. C. when it suited you and added to it when it didn't, is that the idea?

A. No, I followed the valuation theory pretty closely.

Q. Well, now, these can-on rights, $3,180,000, is that allowed by the I. C. C.?

[fol. 1280] A. No, that is an amount in excess of the nominal land value that they allowed when they appraised our land.

Q. How did you arrive at the value of those can-on rights?

A. It has been a long time ago that those figures were made, at least ten years ago, and I don't recollect exactly how we did it, but they are an appraisal, an honest appraisal, to buy them at that time.

Q. Understand I am not questioning your integrity at all. I am merely trying to get the facts. But the figures were made ten years ago. You don't remember exactly how they were made or how they were arrived at, or the basis on which they are arrived at, but you put them in here as a value which you ask the Court to accept; is that correct?

A. Yes, because I thought it was correct for the reason that most of these canyons where we did possess valuable rights, do today, we fought for them in the early days.

Q. I know you did.

A. The value of similar adjacent lands was somewhere in the way of two or three dollars an acre that the Interstate Commerce Commission allowed.

Q. I know. You fought for them, but you wouldn't say that the fact that you had quite a battle to get them from another railroad establishes a value for them in the market?

A. Well, I believe I would say that it did.

Q. Would you say you could fix a value for that, how many men were killed, or how much blood was shed?

A. No, that wasn't the basis.

Q. Now, the efficiency and value of mortgage equipment, I wish you would explain that, will you?

A. I wonder if I could read my manuscript here at the same time?

[fol. 1281] Q. Yes, I didn't get it.

A. At the time of the valuation inventory the Rio Grande owned 3,258 units of narrow gauge freight cars, of which 2,767, or eighty-five per cent, were purchased during the ten years immediately preceding the valuation date. Having been purchased so near to the valuation date, it was considered that the original cost of this equipment was a better measure of value than any hypothetical figure set up by the Bureau as of 1910-1914 price level. This position is also emphasized by the fact that the price per unit to this carrier in almost all cases increased after the valuation date. We actually found out what that difference was.

Q. In other words, your valuation of that equipment, as I understand it, is in excess of the original cost as ascertained by the Interstate Commerce Commission?

A. No, it was their cost of reproduction, I think.

Q. Well, whatever their method was, it was in excess of the original cost?

A. I am not talking about original cost. I am talking about the cost of reproduction.

Q. Well, cost of reproduction.

A. That gave us substantially less than we paid for the equipment.

Q. As of 1930, have you depreciated it at all?

A. Oh, yes, indeed.

Q. At what rate? I mean under what order? I am not asking you to state the percentage.

A. As I said before, I took their computation of per cent based upon the whole equipment account.

Q. But that would be an order of determination which led to absorption, forming depreciation and depreciation [fol. 1282] charges. If you say that, you are carrying in the value of the equipment a depreciation which has not been absorbed; isn't that correct?

A. I don't believe we are talking about the same thing. This observed condition per cent has no relation to any of their depreciation for equipment. In the last three years, in making up this cost of reproduction, I used the book depreciation which I presumed was based on those Interstate Commerce Commission rates.

Q. And you took all the balance as being the present value of the equipment regardless of whether that had been reached in depreciation before that order, or not?

A. I just merely took their observed condition per cent as a straight——

Q. Now, the cost of development of property, not to take too much time, on what theory did you undertake to add into the value of the property the original cost of its development, having valued the property itself upon the basis of cost of reproduction new? Will you explain that to us?

A. On what theory?

Q. Yes.

A. The theory that the carrier would be entitled to that certainly in a rate base.

Q. I am not talking about rates now. I am talking about reorganization.

Mr. Hodges: Let him answer your question.

Mr. Anderson: He said certainly on a rate base they were entitled to it. Now, I am not talking about a rate basis here.

Q. Well, you said you thought they were entitled to it. Was that the only reason you put it in there?

A. Yes, sir.

[fol. 1283] Q. That is the only basis you have for that $9,000,000 item?

A. Well, I didn't just pick it out of the air. That figure was testified to in our primary valuation hearing before the Commission, and it is my recollection that the figure was made up by our Treasurer and our Auditor as their best estimate of what should be in there.

Q. But you have no knowledge of your own as to the correctness of those figures?

A. I haven't, no.

Q. And you are not accurate in your memory as to what the testimony was, are you?

A. I haven't reviewed the testimony.

Q. When did that testimony take place?

A. 1926.

Q. Fourteen years ago. Now, the going concern value, if you allow for cost of development of property which creates the going concern situation, do you add a going concern value to that also?

A. I did. I think you should.

Q. Well, if the cost of development of $9,000,000 creates its going concern condition, and you take that cost in as a part of the value of the property, on what do you base the going concern value in addition to that?

Mr. Hodges: I object to that. The theory of the cost of development is not that the cost of development takes in the going concern value.

Mr. Anderson: If the witness wants to correct it he can correct it. If my question does not put it fairly he can correct it.

Mr. Hodges: I can correct it.

Q. Unless the Court desires otherwise, you can answer the question.

[fol. 1284] The Court: He may answer.

A. I would like to have the question read.

Q. (Question read to the witness.)

A. I testified in direct testimony and gave a rather lengthy set of reasons for this cost of development of physical property and also for going concern value. I feel that they are different matters entirely. They both belong in the valuation.

Q. Not to prolong the discussion, the development of business you feel is not included in the development of property? That is a proper matter of establishing relationships, etc.?

A. Yes, sir.

Q. Aren't those relationships the good will of the property, going concern value, and good will?

A. Well, we estimated them all separately in making our claim.

Q. How did you arrive at the value of that, Mr. Lightburn?

A. As I recall it, we had our officers pass their opinion on what that element was worth.

Q. Well, have you anything on the subject yourself?

A. It is the very definite opinion that development of business costs you something.

Q. Yourself, have you ever had any experience in the development of traffic of a railroad?

A. Oh, not as a traffic officer, but I have been certainly where I could see it.

Q. Well, now, suppose that the earnings of this property a year, instead of being $23,000,000, were $18,000,000. Would you change your valuation in any respect of the property?

A. Well, I did change it from the original claim that we made in the 19A valuation here. We claimed $26,500,000.

[fol. 1285] Q. I am not speaking of that. You misunderstood me. I have now left that item. And, taking your valuation as a whole, let us say that the earnings of this property, instead of $23,000,000, were $18,000,000; would that change your valuation of the property in any way?

A. No, not if the property had been physically maintained in the condition we assumed it to be on our original valuation. The difference of whether it was carrying $23,000,000 worth of business or $18,000,000 wouldn't make any difference in value.

Q. And if it was $5,000,000 your answer would be the same, wouldn't it?

A. Unless the condition at the time we reduced the earnings to $5,000,000 affected the price trend and other figures I used in making this valuation.

Q. Assuming that the price of commodities and other elements entering here were the same, your valuation would be the same if it earned $5,000,000?

A. Yes, sir.

Q. And it would be the same if it earned $40,000,000, wouldn't it?

A. Yes.

Q. Or $50,000,000?

A. That is right.

Q. And you would say that the value of this property was what you have stated here without any regard whatever to what it would earn, or what return it would pay on any valuation you established; is that correct?

A. That is correct. That was the approach we made to it.

The Court: Mr. Hodges, are you trying to determine the value of this property?

Mr. Hodges: I am trying to determine the value of the property.

The Court: Aren't you bound by the Interstate Com-[fol. 1286] merce Commission under the law?

Mr. Hodges: No, not at all, but even under the statute you have before you, Section 77, the testimony which we have introduced is testimony made relevant by that statute if it had no other relevancy. I will argue that at the proper time. In fact, Congress nor any other party——

The Court: Apparently the language here says that is binding upon the Court. Did they certify a value here?

Mr. Hodges: If that is what the statute means and if that is the view adopted by the Court, for that reason it clearly violates the constitution of the United States—clearly so. This Court has the duty of determining the value of this property. I will furnish the Court with all the information and testimony we can produce.

The Court: In that language it seems to me that valuation certified by the Commission is binding upon the Court. The question arises——

Mr. Hodges: They have not certified any value here.

The Court: We should refer it back and ask them to do it.

Mr. Hodges: I think it would be a futile thing to ask them to do, because it is a responsibility that the Court

must take, and the Congress cannot take that responsibility or duty away from the Court in a proceeding of this kind. It is entirely different from any matters we have met up with in later years where in controversy of proceedings an administrative body is given power to find a value and their findings are made binding upon the Court. This is based on a different theory and resting straight and [fol. 1287] squarely upon the constitution. I am prepared to argue that when the time comes.

The Court: Mr. Clay, do you want to examine the witness?

Mr. Clay: Yes, sir, I have several questions.

By Mr. Clay:

Q. Mr. Lighthurn, I understood that various of these exhibits have been prepared by you substantially in accordance with the methods used by the I. C. C. Did I understand you correctly?

A. Yes, sir.

Q Would you briefly describe what those methods are? Who does the work?

A. I attempted to do that in my direct testimony; but I will be glad to go over it again for you. The I. C. C. valuation of carrier properties, including this, is based, as you know, upon the inventory. Quantities were inventoried in the field. Quantities of all kinds, except the land and the equipment, were determined by this field inventory of the engineer.

Q. They are employes of the I. C. C.?

A. They are employes of the I. C. C.

Q. But their work is not official, is it, until it is acted upon by the Commission?

A. It was a joint inventory. We had representatives with them. They did the actual engineering work.

Q. Isn't it true that these various employes of the I. C. C. made an investigation to determine what they call the factors of value?

A. Elements of value.

Q. Isn't it also true that only the I. C. C. itself makes the valuation and determination?

A. No, that is not true.

[fol. 1288] Q. In which they give here to these factors?

A. No, up to a certain point it is a joint affair. We agree with them.

Q. You agree with whom?

A. With the representatives of the Bureau of Valuation.

Q. With the Commissioners?

A. Certainly.

Q. It is an agreement with the Interstate Commerce Commission?

A. This land appraisal that we made in 1937 was a joint appraisal. We had a representative and they had one, and went over the ground.

Q. And found the new values, and changed the old values?

A. And made a new——

Q. Now, Mr. Lightburn, aren't you enough familiar with the ICC practice to know that the ICC alone makes the determination of value?

A. I understood that, but as to these elements of value and the things that you get when you go out in the field to make examinations, etc., a certain amount of that information is jointly agreed to, and it is common property.

Q. It is merely information for the Commission, isn't it?

A. Well, that is what we used in fixing my valuations.

Q. Information as to the elements of valuation?

A. That is correct.

Q. Is that upon the valuation by the ICC for rate making of this property?

A. Not since 1919. They determined and published some data on elements of valuation dated——

Q. Who published it?

A. The Interstate Commerce Commission.

Q. You mean the employes?

[fol. 1289] A. Pertaining to this case. And this is prima facie evidence in this reorganization case in 1937.

Q. But with your familiarity with methods of valuation for rate making by the Interstate Commerce Commission, isn't it true that after this information has been prepared by the employees it is considered by the full Commission, and the Commission gives one weight to one element, and another to another, and arrives at what they call a single valuation?

A. Yes, we did that in 1919. They haven't done it subsequent. In this case the Commission itself doesn't certify any final value.

Q. There has been no final valuation by the Interstate Commerce Commission?

A. That is correct. They just submitted some elements of valuation.

Q. Colonel Anderson referred to what he called functional obsolescence of the equipment. Isn't it common knowledge that there is also functional obsolescence of roadbed because of these motor trucks and buses?

A. Well, it might be conceded, but we don't concede it in the railroad business until the time comes for us to abandon a branch, and then I guess they would.

Q. In other words, you haven't given any consideration to functional obsolescence of plant due to increase of your competitors' inroads on your business?

A. Not in this valuation.

Q. The Trustees of the Rio Grande Western I believe have pending a petition to abandon the line in New Mexico, the line from Alamosa to Santa Fe?

A. That is correct.

Q. Can you tell me what value you placed on that line in this valuation, roughly? Was it either $5,000,000 or $10,000,000?

[fol. 1290] A. I am sorry that I have not present with me——

Q. Can you give any estimate of approximate range?

A. Of the value of that line?

Q. Yes.

A. I could in a few minutes by referring to my data.

Q. Does it run into millions?

A. Yes, it would be probably more than $2,000,000.

Q. More than $2,000,000?

A. I should think.

Q. If you have the figure there I would be glad if you would——

A. I haven't it here. I could get it. I had it when I made up the figures. I had it in my office.

Q. You put that line in at full value even though you know the Trustees are trying to get permission to abandon it?

A. Yes, I put the line in at full value.

Q. Have you put the various narrow gauge lines in at their full value although some of them may be approaching the point that that line last referred to has?

A. Yes, I put them in at full value, but I don't believe that many miles of our narrow gauge system are in that state at the present time.

Q. Now, in case you get permission from the Court and the Interstate Commerce Commission to abandon this line from Alamosa to Santa Fe, can you give me an idea, based on your own experience as to what the salvage value will be?

A. Yes, I can give you——

Mr. McAllister: It is not from Alamosa. It is from Antonito.

Mr. Clay: I stand corrected. I believe the two points [fol. 1291] are not far apart, are they?

Mr. McAllister: Antonito is some distance south of Alamosa.

Mr. Clay: Not more than twenty miles, is it?

Mr. McAllister: Well, I don't know. The line from Alamosa to Antonito is not to be abandoned.

Mr. Clay: It is the southern line to Santa Fe.

Mr. McAllister: Yes.

Q. Suppose this line you valued at $2,000,000 is abandoned?

A. Let's not use the $2,000,000 figure.

Q. What will be realized by the Trustees from the abandonment?

A. Well, a very small part of that amount. Just the salvaged rail and bridge timbers, etc., would only amount to——

Q. Would it be one-fiftieth of the amount?

A. I think it would be more than that.

Q. Or perhaps one twenty-fifth?

A. A good many thousand dollars, yes.

Q. As much as $100,000?

A. No, I don't think it would be that much.

Mr. Clay: That is all I have.

Mr. McAllister: May I ask one or two questions for the Trustees, and I want it understood that I am not appearing in a partisan spirit. I simply want to bring out some facts.

By Mr. McAllister:

Q. Mr. Lightburn, I think this first question I will ask has been fully covered by Colonel Anderson's questions, but it was in my mind before he cross-examined. This testi- [fol. 1292] mony you have given about cost new and cost

less depreciation all has to do with the physical cost of the property based thereon, the physical value of the property?

A. That is correct.

Q. And, putting the matter in a little different form from the way Colonel Anderson put it, it wouldn't make any difference with respect to the values as to which you have testified, as to whether the net earnings were zero or five or six million dollars, or even more than that; is that correct?

A. None whatever, unless as I said to him, the condition that made the lack of business also affected the price level.

Q. Well, you mean affected the costs of material and labor?

A. That is correct.

Q. Now, I call your attention to Debtor's Exhibit 4, dealing with the Denver and Salt Lake Western Railroad Company. I had a great deal to do with borrowing money from Reconstruction Finance Corporation to build that line. That is the Dotsero Cut-off, is it not?

A. It is.

Q. It is my recollection that we borrowed from Reconstruction Finance Corporation—the Rio Grande did—$3,631,000 to cover the complete cost of the line. If it cost more than that I think perhaps we missed a bet, because I thought we were borrowing all we could to build that line, but you have the cost of reproduction new of that line in Debtor's Exhibit 4, four million five hundred and ninety-seven thousand odd dollars, with land values of $12,000.00 added. Is it correct that the original cost of that property in 1934 was about $3,631,000?

A. Very close to that amount. I have the cost up to [fol. 1293] December, 1935, of $3,547,000.

Q. What is the reason for the greatly increased cost of reproduction new which you have shown in Debtor's Exhibit 4?

A. The very sudden and rapid rise of construction costs, beginning just about 1934 and going right up to near the end of 1937.

Q. Well, then, during that period, construction costs must have gone up about twenty-five per cent?

A. They did generally. The cost of grading did not go up, but other construction costs did go up very materially.

Q. Well, then, that answer explains the reasons for your figures in Debtor's Exhibit 4?

A. That is right.

Q. Colonel Anderson asked you something about the valuation you placed on water rights. Have water rights a recognized value in Colorado?

A. They certainly have.

Q. And also in Utah?

A. Yes, sir.

Q. The doctrine of appropriation applies in those states, does it not?

A. It does.

Q. And the first appropriator has the best water right, generally speaking?

A. That is correct.

Q. And such water rights are bought and sold, are they?

A. Bought and sold just the same as any other real property.

Q. And in the case of the Rio Grande certain of these——

By the Court:

Q. Are these decreed water rights you are talking about?

A. Yes, sir.

Mr. James A. Marsh: Are they irrigation water rights?

Mr. McAllister: Yes.

[fol. 1294] By Mr. McAllister:

Q. You purchased some?

A. Purchased some or appropriated or filed on others. That doesn't decrease their value.

Q. Those rights have been recognized as belonging to the Rio Grande?

A. They have been adjudicated and decreed.

Q. Adjudicated and decreed water rights do you consider have a fairly fixed value?

A. I do.

Q. And it is upon your information with respect to that value or those values that you have valued the water rights mentioned in Debtor's Exhibit 5?

A. It is, sir.

Q. Mr. Lightburn, are you familiar with a report of the Bureau of Valuation of the Interstate Commerce Commission as of December 31, 1935, affecting all of the companies embraced in Debtor's system, which was filed by that Bureau of Valuation with the Commission at its request?

A. I think I have seen that, Mr. McAllister, but I——

Mr. Hodges: May it please the Court, I wish to make an objection to references to that Bureau of Valuation elements of value which was filed before the Interstate Commerce Commission. We make the objection so that I will not, as a consequence of failing to make an objection, make competent as evidence that report. That report was filed, and all parties—well, I can't say all parties, but Colonel Anderson's group and ourselves and I am sure some of the others joined—objected to the introduction of that document called elements of value, for reasons fully set forth in the record. The objection, of course, was overruled, and the elements of value are referred to by the ICC in their report. I wish to [fol. 1295] protect our position that those elements of value as filed by the Interstate Commerce Commission were no evidence there, and they are no evidence here. They were just filed. They are not such a document or statement as authorized to be filed under Section 77, and to be made prima facie evidence of facts recited. Those elements of value are not statements of fact from our point of view, and are not authorized by the statute, and are not competent evidence. It may be quite enlightening to see them and know what they are, but I don't want to be prejudiced here or hereafter by any technicality in regard to the matter, and by allowing, without objection, interrogation to be made which might bring them in as part of the record properly and without objection. So I do object to referring to these so-called elements of valuation filed by the Bureau of Valuation, not under oath, and not under the authority of Section 77.

The Court: You say they are in the record?

Mr. Hodges: They are in the record here. They are certified here, but our objections are also filed with them.

The Court: Is this cross-examination?

Mr. McAllister: This is cross-examination, but I think I will let it rest on that, because the report is in the record of this court, and, of course, can be referred to along with all other parts of the record.

Mr. Anderson: I think the objections made to evidence continue in this court and can be availed of at the proper time. I assume that is true upon the record in the de novo [fol. 1296] hearing. We did object to those so-called elements of value, because they are not a valuation, and they

didn't do anything, and therefore we want to insist upon our objection to them, but we will not argue them.

Mr. McAllister: I think you are correct that proceedings before the Commission may be considered by this Court subject to the objections you make.

Mr. Anderson: Yes, of course.

Mr. McAllister: I won't ask for an answer to that question.

The Court: Is that all?

Mr. Wood: Your Honor please, I would like to ask four or five questions following along with the questions Colonel Anderson asked.

By Mr. Wood:

Q. Mr. Lightburn, these exhibits of valuation which you put in state value at December 31, 1938, do they not?

A. They do.

Q. At December 31, 1938, what was the average age of the rails on the standard gauge lines of The Denver & Rio Grande Western Railroad Company?

A. I haven't the exact figure. I know that the property generally was in very good physical condition.

Q. Do you know approximately what the average age of those rails was?

A. I haven't that information with me.

Q. Can you get that figure so that we can put it in the record here?

A. I think so.

Q. Can you tell me also what the average age of the narrow gauge rails was at the same date?

[fol. 1297] A. I would just be guessing if I tried to give it to you. I get it.

Q. Will you please get that figure?

A. Yes.

Q. What is the approximate average life of the standard gauge rails?

A. It depends entirely on the place you put them.

Q. Well, let us take the approximate average life of standard gauge rails on main lines.

A. About ten years.

Q. About ten years?

A. Yes, under the heaviest traffic. From ten to twenty years. We have rails on our track that have been in forty

years with the same traffic going over it. We would not allow rails that old to stay in with the speedy traffic.

Q. Those old rails that you speak of are on branch lines or where the traffic is light?

A. No; we have rails that are over forty years old on our main track; they are not where there is high speed; they are at the end of the yard or some terminal. When I say ten years' life of rail, I do not mean that the rail is worn out in ten years, but we might take it and put it somewhere else at the end of ten years.

Q. But if you take it out it means that you have to replace it with new rails?

A. That is correct, but we might put it somewhere else to keep from buying new rails, by putting it somewhere else.

Q. What is the approximate average life of the narrow gauge rails?

A. Oh, forty years, probably. You mean how long it stays in before we have to remove it?

Q. That is right. At December 31,1938, what was the average age of the standard gauge ties?

A. I haven't that information with me. It is all available in our engineering department, but I did not come prepared [fol. 1298] to answer questions of that kind.

Q. Can you get that figure so that we could have it put into the record?

A. Yes, I think so.

Q. And also could you get the average age of the narrow gauge ties?

A. Yes, sir.

Q. And what is the average life of the standard gauge ties?

Q. Twenty-five or thirty years.

Q. What is the average life of the narrow gauge ties?

A. You asked me about that.

Q. No, I asked you about the standard gauge ties.

A. It depends on whether they are treated or untreated, and it depends entirely upon the place they are, the amount of traffic that is going over them, and on whether they are in a curved territory, and so on. We have no——

Q. I realize that it depends on the place where they are used, but, obviously, what I am trying to get at here is the comparison between the average age of these types of property on December 31, 1938, and the average life, and if we

can get those figures, that comparison should show something even though we all understand that the average life is different depending on where the use is.

A. Well, first let me correct that answer I gave you on the average life of standard gauge ties. I thought you asked about the narrow gauge. I know the standard gauge average tie life is less than twenty years, and the narrow gauge is less than thirty years.

Q. Well, is it not true that a new railroad would require no new rail for perhaps twenty-five years, or not much new [fol. 1299] rail, and would require no new ties for perhaps twenty years?

A. No, that is not true. If you think about the Rio Grande now—my first answer about that rail is correct; in the heavy traffic we would not dare to leave it as long as we would any other place; we would certainly not leave ties in a track for twenty years in that traffic.

Q. What percentage of the standard gauge rail would you estimate, approximately, on those heavy density lines, that gets the hard use, that has to be very frequently replaced?

A. Well, there isn't such a very large percentage of them in the heavy curved territory.

Q. Ten per cent?

A. Yes, it would be that much probably.

Q. Not much more?

A. There wouldn't be any more than that.

Q. It is true, is it not, that bridges wear out—bridges and trestles wear out just like rails and ties?

A. Unless they are properly maintained. We have bridges that have been there since some of our narrow gauge lines were originally built, by replacing timbers, that are still there; the character of the traffic hasn't changed, but they are in a place where there isn't heavy traffic. Am I answering your question?

Q. I think you are. It is true, is it not, if you have a wooden bridge, the timbers of which have expended half their life, that you have the same result as though the bridge was half worn out, because instead of building a new bridge to replace the old one you would merely substitute timbers?

A. That is right.

Q. But the bridge has in effect used up half its life under the circumstances that I state?

[fol. 1300] A. Well, so far as the question of its value is concerned, you can say that its life is diminished, but so far as its serviceability is concerned it is still one hundred per cent, and by keeping it so, it will keep on going indefinitely. If the piles rot off we drive new ones, or with the timbered bridge, if the stringers wear out—and we determine that by regular inspection—we simply put new timbers in, and it is charged to operating expense. So the value of the bridge is there and it is just as serviceable until you have to change it for some other reason.

Q. But if the timber were new you wouldn't have to expend any money to speak of on the bridge until the timbers had become old, would you?

A. No.

Q. It is true, is it not, that the elements of value of the Bureau of Valuation of the Interstate Commerce Commission do give effect to depreciation in structural right of way of the kind that I have been mentioning, namely, the age of the rails and the ties and the bridges and the trestles?

A. Yes, that is the way the Interstate Commerce Commission Bureau of Valuation determines it.

Mr Wood: That is all.

(Short recess.)

Cross-examination.

By Mr. Fitzgibbon:

Q. Mr. Lightburn, in your Exhibit 7 is an allocation of equipment valuation among various mortgages, are you expressing any opinion as to the lien of the mortgages upon equipment?

A. No; I testified that we were just trying, with all the information we had, to allocate it approximately; we do not [fol. 1301] pretend to say which equipment belongs to which mortgage.

Q. And what you did as you took an agreement between a certain limited number of parties to this case as of 1935, you got certain percentages from that and then brought those into your 1938 date?

A. Yes. But in addition to that we made an adjustment—approximate adjustment—of what we had learned from the agreement; some of the bondholding interests shifted some

of that equipment from the Refunding and Improvement to the D. & R. G. Consolidated.

Q. Do you know what the original cost of this equipment was new as shown on the carrier's books, with additions and betterments to the end of 1938?

A. Yes. I just took the 1935, recorded our original costs and added the net additions to equipment for the three succeeding years, and find it to be $48,496,901.

Q. In the Commission's elements of value what was the figure that they took for this equipment new?

A. You mean cost of reproduction new or——

Q. Cost of reproduction new, yes.

A. They used the 1935 cost of reproduction new, $50,179,822.

Q. Now, Mr. Lightburn, what I understand you did—and correct me if I am wrong—you took the Commission's reproduction new, with additions and betterments, and you took certain index figures to arrive at a different cost, and with that result you then got to your figure of 68 million some odd?

A. $68,661,095 for the value of equipment as of December 31, 1935.

Q. And to that figure of 68 million you then applied [fol. 1302] depreciation figures which were approved by the Commission in their order of 1938—that is, you reject the Commission's valuation; you reject—I grant it solely for this purpose—you reject the original cost as shown by the carrier's books; you reject the Commission's basis of some 50 odd million, yet you do accept the Commission's depreciation rates?

A. Yes, because they were made after at least a cursory examination of the equipment and it was their best judgment of the condition and it came not very far from what was on our books.

Q. But the Commission was applying those to a different base?

A. They were applying them to a different base.

Q. And various elements go into fixing a depreciation rate, and one of them would be the original cost, would it not?

A. I don't believe they took any account of the original cost in making their estimate of cost of reproduction less depreciation.

Q. I am not using depreciation in that sense. I am talking about when you fix a certain valuation for property that might have a very strong relation to your depreciation rate.

A. Well, I don't believe——

Q. That is the same element that Colonel Anderson has previously spoken about: If you feel that your valuation is high you will fix one rate; if your valuation is low you might fix another rate; it does, of course, depend on the expected life still to run?

A. Well, I don't know that I can just answer your question. Would you——

Q. Well, I am really making an observation, and I am asking you to address yourself to that, as to why you feel justified in taking the Commission's depreciation rate and [fol. 1393] rejecting their base figure.

A. Their base figure, according to our view of the way it was arrived at, was manifestly wrong. I had access to their pricing data and knew where their so-called 1935 price level was, and it was nowhere near where it should be for the subsequent period, that is, the period of 1938.

Q. Then you disagree with the thought or the proposition that if equipment has been insufficiently depreciated in the opinion of one body, that you should not take then a higher depreciation figure for the remaining life of the equipment?

A. Let me see if I understand you,——

Q. Let me rephrase the question: Assume that the equipment is on the books at $1200 and you believe the value of that equipment is $1,000, if you keep the base figure of $1200, assuming a ten-year life in each case, won't you take a higher depreciation figure if you leave $1200 on the books rather than if you leave $1000 on the books?

A. Yes, certainly.

Mr. Fitzgibbon: That is all.

Redirect examination.

By Mr. Goree:

Q. Colonel Anderson asked you about canon rights of way. I want to inquire whether this was a pure conjecture on your part, that is, the value of some three million several hundred thousand dollars that you assigned to these canon

rights of way, or if you had some actual experience upon which to base this value?

A. It is my recollection that in arriving at this figure which was computed by our chief engineer, that the value of that occupancy—the canon—was related to what it would cost us if some other railroad had been there ahead of us [fol. 1304] and we had to build on the other side of the canon, let us say.

Q. Well, what canon do you have particularly in mind, now?

A. Of course, the striking example is the Royal Gorge. We have track on one side of the Royal Gorge and at one time we made complete surveys and a very careful estimate for double-tracking that stretch of our road through the gorge, and we had before us, when these estimates of canon values were computed, the excess cost of that second line over on the other side of the canon. Likewise, we had actual cost figures of construction of our second track through the Eagle River canon. That was actually constructed. We knew the cost of the first line and we knew the cost of the second line on the other side of the canon and took the difference, and by numerous computations and data of that kind we arrived at this figure of three million odd dollars for canon rights in excess of the amount that had been allowed by the Commission based on similar adjacent land which was nothing but grazing lands.

* * * * * * *

[fol. 1305] WITNESS WILLIAM WYER

My first exhibit deals with the question of the historical effect of the opening of the cut-off on the volume of the Rio Grande's transcontinental freight traffic. This exhibit is in two sheets.

Mr. Anderson: Group Exhibit No. 1, or I think probably Committee Exhibit No. 1 would be better.

(The paper presented was marked for identification Committee Exhibit No. 1.)

The Witness: There are two sheets. The first one is marked Sheet 1.

This exhibit is headed "Transcontinental Freight Traffic Estimated Tons of Principal Commodities Handled by Various Transcontinental Carriers, 1928-1939, Inclusive."

All of the figures shown on here are in tons except certain figures which are obviously in percentages, and the three zeros have been omitted, so all of the figures represent thousands of tons. All of the figures on here are taken from annual reports of the various carriers to the Inter-
[fol. 1306] state Commerce Commission for the years shown, and the exact figure which has been taken from those reports is indicated in the table at the bottom of Sheet 1. The exhibit shows the tonnage of a number of different commodities of transcontinental freight for all of the principal transcontinental railroads of the country. These are the Denver and Rio Grande Western, the Union Pacific, the Atchison, Topeka & Santa Fe, the Great Northern, the Northern Pacific, and the Pacific Lines of the Southern Pacific.

Mr. Clay: May I ask a question at this point?

By Mr. Clay:

Q. This exhibit is headed: "Estimated Tons of Principal Commodities." Will you explain how you made these estimates?

A. I will do that in the course of my——

Q. Before you go any further.

A. I will do it at the proper place. I do not think this is quite the place to go into the detail basis——

By the Court:

Q. As I understand it, this column 1 here is actual figures that these roads actually handled?

A. These are actual figures taken from the annual reports of these railroads to the Interstate Commerce Commission.

Q. In other words, the Denver and Rio Grande handled east only 800 tons of oranges and grapefruit?

A. Eight thousand tons.

Q. How many tons to a carload?

A. That would be about 500 cars, I should think, or a little more.

Mr. Clay: I object. Did Mr. Wyer make this estimate? Who made the estimate? He has not testified.

[fol. 1307] The Court: The Witness stated he did.

The Witness: I expect to explain in detail just how the estimate was arrived at, but there is an orderly way of

making the explanation, and I prefer to follow the orderly way.

Mr. Clay: There is an orderly way to explain the basis before you give the testimony in the record.

Mr. Anderson: Your Honor please, I desire to have this witness give all the information possible to the Court and counsel on this subject, but I think if we start cutting it up and breaking it up with all kinds of intervening questions it will simply confuse, and counsel will have abundant opportunity to cross-examine after the primary situation has been presented in order, and while I do not wish to offer any restriction on the counsel I hope they will refrain from interrupting the development of the case, and that they will make their notes and ask the questions when it is their time.

The Court: I think that is the proper procedure. Go ahead, Mr. Wyer.

The Witness: I haven't made any figures on this for the Western Pacific which is largely a transcontinental railroad, but the reason for that is that all of the tonnage handled by the Western Pacific is delivered to one of the railroads that is shown on this exhibit, that is, either the Denver and Rio Grande Western or the Union Pacific or the Great Northern, so that if the Western Pacific's tonnage were included it would simply be a duplication of totals shown under other railroads, and one of the purposes of this study is to show the proportion of the total trans-conti- [fol. 1308] nental traffic of this country which the Rio Grande has handled during the period covered by this exhibit. Having shown the roads which I show on this exhibit, I then show the principal transcontinental commodities in which the Rio Grande is interested. These are by no means all the commodities which are handled by the Rio Grande or by these other railroads, and they do not include absolutely all the business handled by the Rio Grande as transcontinental business, but they include all the commodities which are predominantly transcontinental in so far as the Rio Grande is concerned. The annual report of the Rio Grande to the Interstate Commerce Commission shows its commodities in four classifications. The first of these classifications is business originating on the Rio Grande and terminating on the Rio Grande. Obviously that is not transcontinental business. The second classification is business originating on the Rio Grande, but delivered to connections. Now, the maximum possible haul that such business could

have would be if it originated at Ogden and moved east, and was delivered to a connection at Denver, or vice versa, but that also would not be transcontinental business. The third classification which the Rio Grande reported to the Interstate Commerce Commission is business received from connections and terminating on line, and that obviously cannot be transcontinental business, because it terminates at some point on the Rio Grande. And the fourth classification which the Rio Grande reports to the Interstate Commerce Commission is business received from connections and delivered to connections, and that, equally obviously, is [fol. 1309] almost entirely transcontinental business. The only business included in Class 4 which would not be transcontinental would be small amounts which the Rio Grande might receive from a short line connection such as a central route. Also if business originated on the Western Pacific, we will say, just west of Salt Lake City, that might not be considered transcontinental business, although as far as the Cut-off is concerned it is competitive, and it is really transcontinental. So that fourth classification is almost exclusively the transcontinental business of the Rio Grande, and there is not any other transcontinental business included in any other classification. So I started by taking the commodities of the Rio Grande, which, according to the report to the Interstate Commerce Commission, were important transcontinental commodities, and then I took for each of the other carriers the figure from this annual report to the Interstate Commerce Commission which most closely approximated its handling of the same commodities in transcontinental movement, and the total at the bottom of Sheet 1 shows exactly which classifications I took for each of the other carriers. Because of the different situation of those carriers, that classification is always not the same, or I should say not always the same as Class 4, which I took for the Rio Grande, but practically the classification which in my opinion gives the closest approximate to the transcontinental tonnage for each of these commodities for each of the other railroads. Now, the Rio Grande's principal competitor for transcontinental business is, of course, the Union Pacific, so that my first comparison which I made [fol. 1310] from this exhibit was to compare the Rio Grande's transcontinental business with the total transcontinental business of the Rio Grande and the Union Pacific combined. I might explain that a little further in this way: that there

are three main transcontinental routes: the northern route served by the Great Northern and the Northern Pacific; the central route served by the Union Pacific and the Rio Grande; and the southern route served by the Southern Pacific and the Santa Fe. The Santa Fe also competes somewhat for central route business, and the Union Pacific competes somewhat for southern and northern route business. The Great Northern competes somewhat for central route business, but, by and large, they are the three main routes, and the different competitors on each of those routes are as I have stated. So that the first comparison is to show what percentage of the central route transcontinental traffic was handled by the Rio Grande in each of these years, and I show those percentages in the bottom quarter of Sheet 1 of Exhibit 1. I show them for each particular class of traffic, and then up in the right-hand column I show them for the total, and you will notice that in 1928 the Rio Grande handled 16.4 per cent of the total transcontinental traffic of the central route, and that in 1939——

By the Court:

Q. Where does that appear?

A. That appears on Sheet 1 in the right-hand column, the first figure in the fourth big block. The block is described; "Percent D&RGW to total D&RGW and UP," and the per [fol. 1311] cent is the first percentage in the right-hand column.

Q. In other words, the Denver and Rio Grande handled 16.4 per cent of all of this on the central route?

A. Yes, sir, in 1928, and in 1939 its percentage of the central route business had increased to 25.4 per cent.

Q. You say over here "Percent D&RGW to total D&RGW and UP."

A. That is correct.

Q. In other words, of the total business handled by those two routes, the Rio Grande handled sixteen per cent?

A. Sixteen per cent in 1928, yes, sir. In other words, the total business handled by those two roads less the transcontinental business handled by the central route.

Q. That went up to twenty-five per cent in 1939?

A. That is true. Now, in connection with those percentages I would like to point out that the Dotsero Cut-off was opened for business on June 15, 1934, and that from

1928 to 1933 the Rio Grande's percentage of the transcontinental traffic on the central route increased from 16.4 to 22.2, or 5.8 per cent of the total business of that route. From 1934 to 1939 the increase was from 22.2 per cent to 25.4 per cent, or only 3.2 per cent of the total business on the central route. In other words, the Rio Grande's gain in comparative position in the handling of transcontinental traffic over the southern route increased more in the five years prior to the opening of the Dotsero Cut-off than it increased in the five years subsequent to the opening of the Dotsero Cut-off. That is a tremendously basic fact, and it is important to keep it in mind all through this consideration of the Dotsero Cut-off which I am going to [fol. 1312] make in my study. Now, on Sheet 2 of this exhibit I make the same comparison for all transcontinental traffic in the country. That comparison is found in the bottom block on Sheet 2, where I show "Percent D&RGW to total all lines." In 1928 that was 4.5 per cent. That is, the Rio Grande was handling four and a half per cent of all the transcontinental business of the country in 1928. In 1939 that had increased to 7.4 per cent. Now, making that same comparison of the five years prior to the opening of the Cut-off with the five years subsequent to the opening of the Cut-off, we find that from 1928 to 1933 the Rio Grande's proportion of the total transcontinental business of the country increased from four and a half per cent to 6.2 per cent, while from 1934 to 1939 it increased from 6.3 per cent to 7.4 per cent, so that the increase during the five years prior to the opening of the Cut-off was 1.7 per cent of all the transcontinental business of the country, and the increase in the five years after the opening of the Cut-off was 1.1 per cent of the total of the business of the country, so that if you make the comparison on the basis of the business of the central route, or whether you make it on the basis of the total transcontinental business of the country, the Rio Grande's proportion grew more in the five years prior to the opening of the Cut-off than it grew after the Cut-off opening.

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[fol. 1313] Mr. Anderson: I offer the exhibit described by the witness as "The Denver and Salt Lake Railway Company Account" as Committee Exhibit No. 19.

[fol. 1314] The Court: It will be admitted.

August 3, 1940

Mr. Anderson: I now offer the printed reports of the Trustees for the D. & R. G. W. for 1937, 1938 and 1939. By the way, I have not given numbers to the others, so I will now ask leave to give. The reports of the Denver and Salt Lake for 1937 I ask be received and marked Committee Exhibit No. 21. The report of The Denver and Salt Lake Railroad Company, annual report, for the year 1938 I ask be received in evidence as Committee Exhibit No. 22. The report of The Denver and Salt Lake Railway Company for the year 1939 I ask be received in evidence as Committee Exhibit No. 23. I now offer in evidence report of The Denver and Rio Grande Western Railroad Company, Wilson McCarthy and Henry Swan, Trustees, for the year ended [fol. 1315] December 31, 1937, and ask that it be received in evidence as Committee Exhibit No. 24. A similar report of the Trustees of the D. & R. G. W. Railroad for the year ended December 31, 1938, and ask that it be received in evidence as Committee Exhibit No. 25. A similar report of the Trustees of the D. & R. G. Railroad Company for the year 1939, and ask it be received in evidence as Committee Exhibit No. 26.

[fol. 1316] By the Court:

Q. This Debtor's plan you have been discussing calls for total fixed charges including preferred stock of $7,768,000. Have they ever had earnings available in any year of that amount?

A. Yes, they had in 1928, 1929 and 1930, earnings in excess of that.

[fol. 1317] Q. You mean the consolidated property?

A. Yes, sir.

Mr. Anderson: May I ask a question?

The Court: Yes.

By Mr. Anderson:

Q. When you speak of fixed charges, don't you mean fixed charges of the capital fund, contingent interest and preferred stock?

A. Those are hardly fixed charges. Those are total cash requirements for the service of those securities.

Q. Is that the $7,000,000 you refer to?

A. The $7,768,000 would take care of all the interest, both fixed and contingent, and all the preferred stock, dividends, and the capital fund and sinking fund.

Q. That is what I thought; I wanted to make it clear that that was not fixed charges.

A. That is correct, that is not the fixed charge, the fixed charge is only $2,538,000.

Mr. Hodges: I notice the Court's question referring to fixed charges incorporated the bonds and preferred stock as part of the fixed charges. I just want to call attention to that, because of course that is not a fixed charge.

The Court: I mean, your total charges on your structure here calling for $7,768,000. Is it your opinion that that can be earned, based upon past history?

The Witness [William Wyer]: I think you would find sometimes when that would be earned; it would not be earned very often, but I think you would find a year now and then when that figure would be reached.

Of course, there is one thing that is a matter of technical accounting, which I think ought to be considered in connec-
[fol. 1318] tion with that matter of charges, and that is that under the Interstate Commerce Commission classification that capital fund and your sinking funds are not charges against income. That is, that goes to reduce your debt, but they will go to add to your assets, and they are not charges against income under the Commission's classification of accounts. If you took those items out you would be taking out slightly over a million dollars.

By the Court:

Q. What are those items?

A. The sinking fund and the capital fund, those two items amount to just a little bit over $1,000,000, so that if you take them out, your actual interest and dividends on the securities outstanding is reduced to about $6,760,000.

Q. If you take them out there is in sufficient earnings to support your plan to carry out all the provisions you have here?

A. Taking them out would not change the amount of the earnings, it is simply a matter, as I say, of how you state

the charges against your income, and under the Commission's classification, those representing investment of new money or retirement of debt, are not charges against the income of the company.

Q. You mean, the sinking fund is not?

A. No, sir, it is not.

Q. Don't you believe a sound financial plan would require a sinking fund?

A. Yes, I think it ought to be in the plan and we have it in our plan, but I am simply saying on the basis of the Commission's regulations, that would not be a deduction from your income.

[fol. 1319] Q. I understand that, but you say this financial structure has been supported by the earnings, that is, to the extent of the fixed charges, but not paying anything on the stock?

A. What I tried to say was that on the average since the last receivership these fixed charges have been covered; I am not certain whether the charges including capital fund and sinking fund have been covered or not. I would like to check that up and give you the exact figure, but in the three years 1928, 1929 and 1930, all of the charges, including interest on the preferred stock and the capital fund and the sinking funds, were covered by earnings, and there has been income available for that in those three years.

Q. What is that capital fund to be used for; what is the nature of it?

A. It can be used for anything in the way of adding to the property or improving the property that the management may decide to use it for.

The Court: That is all I have to ask.

By Mr. Hodges:

Q. The Court asked one question and got an answer there that I do not quite understand, and I would like to clear it up. In order to do that I have to make a statement. Prior to 1932 you have a history of earnings of this Debtor Railroad since the Salt Lake Cut-off, and possibly extending prior to that time, which would support the structure which we propose. Since 1932, under conditions prevailing in this country, the earnings of this property have dropped to a lower level, and to date you have before you that picture. Did you intend to say that in the tomor-

row, or would you attempt to say, that this road would [fol. 1320] earn enough to carry the structure you propose, in some years, but not with regularity? Now, I understood you to say to the Court that in the future, from what we know today, we could simply say that the structure you propose could be carried out in some years, but the implication lies at least, not with regularity. Do you undertake to say that?

A. What I believe about that situation is this: First, let me say I did not make any estimates of my own as to future earnings on this property. We rely on the estimates made by Mr. Pyeatt and Col. Ayres, and what I am saying is based upon their studies. Based upon their studies, the fixed charge of $2,538,000 would be safely earned. The total, including contingent interest of $4,343,000, would be more than earned on the average, but there would be years when it would not be earned. The total of $7,768,000, including the preferred stock, would be earned occasionally, but not very often.

Q. Do you understand that the earnings which they projected were the maximum earnings that could be expected from the railroad?

A. No, I do not understand their estimates to be maximum earnings.

Q. They figured that amount by normal years, did they not?

A. Yes, I think they define that in some detail.

Q. And, in short, it was that within a reasonable time we could be expected to be back to that level of earnings?

A. As an average; there would be some years it would be below it and some years it would be above it.

Q. Didn't they define their normal year as that year that we might be expected to reach when some of the adverse [fol. 1321] conditions which now surround this road—and perhaps the industry—ceased to operate to the disadvantage of the road?

A. Yes.

Q. And they did not attempt to say that that was the top to be expected, nor did they encourage us to expect to return to the earning conditions which preceded the depression?

A. I think that is correct.

By the Court:

Q. That was for 1939; wasn't it, which they adopted as the normal year?

A. I think there was some time, and that they hoped that that condition would arrive by 1939.

Q. Didn't they give estimated earnings for 1939 as the typical year?

A. No, we did not give an estimate for 1939; they gave this estimate what they expected to be normal earnings, and then I think that they said that they hoped that that situation would develop by 1939.

Q. Have those earnings ever been made by this property?

A. You mean, since they made the estimate, or prior to that time?

Q. At any time.

A. Yes, they have been made in a good many years prior to the time they made the estimate. I think Mr. Pyeatt's estimate was around $6,000,000, maybe a little bit more.

Q. What?

A. About $6,000,000, as I recall it.

Mr. Anderson: If I may state to the witness, $6,215,423 was Mr. Pyeatt's estimate of net in a normal year.

The Witness: $6,215,000?

Mr. Anderson: Yes.

[fol. 1322] The Witness: Estimated gross.

By the Court:

Q. Have those figures ever been reached in any year?

A. They were reached in 1927, when the figure was $7,300,000; 1928, when it was about $8,600,000; 1929, when it was $10,350,000; 1930, $8,000,000. 1931 almost reached it, $6,100,000. I have not got the figures here for 1925 and 1926, but I think they were also in excess of that figure.

Mr. Anderson: Your Honor will understand in repeating the figures to the witness I am not adopting that testimony, merely stating the figures.

By the Court:

Q. What was the depreciation and maintenance that year? Didn't those figures go down a good deal?

A. You mean, included in Mr. Pyeatt's estimate or in those years?

Q. In those years you speak of, in reaching those figures.

A. I think for those years the maintenance was pretty high. In 1927, 1928 and 1929, they were high; the property was carrying on a very heavy improvement program. Now, the maintenance in 1925 and 1926 was pretty low as to equipment, because in those years, under special authority from the Interstate Commerce Commission, the road was charging the cost of rehabilitating its equipment, taken over at the end of the receivership, to capital account, and was not charging a good deal of maintenance of equipment, which under ordinary circumstances would have been chargeable that way. During the entire period I think the depreciation charges were probably a little lower than they should have been. I would say in 1927, 1928 and 1929 [fol. 1323] maintenance and depreciation charges were fully adequate. In 1925 I would say they were too low for normal expenditure.

Q. When the property came into the court in 1935 hadn't the maintenance been unusually low?

A. I think for probably two years prior to that time they had been held down pretty low.

Q. It was not maintained, then?

A. I think there was some cut in maintenance in 1935 and 1936.

By Mr. Hodges:

Q. Was that condition of cut in maintenance peculiar to this road or not?

A. No, that is a condition that I think you will probably find on any road that is struggling to maintain itself—its financial life. I have had occasion to make studies of railroads that have gone into bankruptcy, just from that point of view, and I think it is a common characteristic you find in nearly every road that goes into bankruptcy, that at the time it goes in there exists some need of maintenance, because the management has been struggling to keep afloat.

Q. Have you made any study to find out the condition with respect to need of maintenance of other Western roads that were not struggling to keep their heads above water, say, during that period of low business?

A. I think that was generally true; in fact, I know it was generally true of most railroads in the country during that period.

Q. And it is true in that period of low business, and this threat, whatever it was, the tendency of all railroad managements, and particularly those in the West, was to curtail their maintenance expenditures?

[fol. 1324] A. I do not think it was confined to railroads in the West; I think you might say that that was true of railroads generally, and particularly true of railroads whose financial condition was threatened.

By Mr. McAlister:

Q. Mr. Wyer, from your study, is it not evident that one reason for undermaintenance during, say, two or three years prior to 1935, was due to the desire to keep up the interest upon the funded debt of the Debtor?

A. Yes, I think that is correct.

By the Court:

Q. Was there some interest paid that was not earned? Have you any figures on that?

A. Yes. I think during the year 1934 there was probably some interest paid that was not earned. I think that was the year that occurred. Possibly 1933, also.

By Mr. Hodges:

Q. Can you call the Court's attention to an exhibit which you prepared, showing the years in which certain payments could have been made on deferred dividends on common stock, in which the money was reinvested in the property? You remember the exhibit?

A. Yes, I remember the exhibit.

Q. Do you have the number of it?

A. No, I do not.

Mr. Hodges: We will supply your Honor with the number of that exhibit.

By Mr. McAllister:

Q. It was true, as to provisions in the general mortgage, that the interest upon the general mortgage bonds would not become a positive, fixed, charge until 1929, and

[fol. 1325] that, speaking generally, that prior to that time the directors had power to utilize the money instead of paying that interest upon the property, in order to keep it a going concern?

A. It was due in part to that, but the exhibit which I prepared and put in the case showed what would have been available for the preferred stock, and I think, in three years, for the common stock, if all the arrears on the general mortgage had been made up, either way.

By Mr. Marsh:

Q. Did your exhibit show the application of the arrears?

A. I think it did, Mr. Marsh.

Q. That was one of the matters that was briefed before the Commission?

A. In fact, it showed in each year the making up of all arrears and what would have been available if the arrears up to that time had been made up. It did not anticipate future arrears, but I think it made up all past arrears.

Q. Well, the exhibit will show?

A. The exhibit will shew, but I am pretty sure the basis covered all past arrears on general mortgage bonds.

The Court: That is all I care to ask the witness. Do any of you gentlemen care to examine him further?

By Mr. Anderson:

Q. Mr. Wyer, there were some questions asked by the Court and also by counsel as to the improvement program before the period of bankruptcy. Do you know, from your investigation of the property and from the various reports here, whether there has been some extended improvement program since the period of bankruptcy?

[fol. 1326] A. Yes, there has been a very heavy program.

Q. The annual reports of the Trustees are in the record, and they give, with reasonable accuracy, the results of those and their effect upon maintenance of way charges and their effect upon other factors involved, do they not?

A. Yes, they do; and I have a special statement here which gives that effect quite accurately.

Q. Will you give that?

Mr. Anderson: I want to clear this question up. We will rely on it, because it is an important question in the

argument of this case. I might say the Commission recognized the effect of the maintenance and life improvement program, whether in bankruptcy or in the operation of the company.

Mr. Clay: That is discussed in the Commission's record, pages 5105 and 5106.

Mr. Anderson: But I want to get the facts on the record here.

A. In the four years, 1936 to 1939, which, of course, are all within the period of trusteeship, the charges to operating expenses in connection with additions and betterments, including additions and betterments on leased lines, were as follows: 1936, $1,118,842. 1937, $1,972,284. 1938, $742,820. 1939, $1,272,409.

Mr. Clay: May I ask Mr. Wyer where he got those figures? Is that a Trustee's statement?

The Witness: Those are taken from the statement prepared by the Accounting Department dated May 17, 1940, headed "Charges by Classes to Operating Expenses in [fol. 1327] Connection with Additions and Betterments, including those on leased lines, for the following periods."

Mr. Clay: Well, is that as it came from the Trustees' staff, or have you readjusted it?

The Witness: No, there are no readjustments on that.

The Court: Will you turn to page 5104 of the printed record? What do you say in regard to those figures there on the amount of fixed interest charges, $2,774,554?

The Witness: That is the figure that the Insurance Group Committee, I believe, considered was the safe fixed charge. That is the figure they thought was a safe fixed charge.

The Court: What?

The Witness: A safe fixed charge. That corresponds to the figure that the Debtor thought was a safe fixed charge, around 2½ million.

The Court: Do you think these figurse are correct, then?

The Witness: Well, we did not differ very much from the Insurance Group Committee as to what a safe fixed charge should be. They figured about 10 per cent higher than we did. I think our figure of around 2½ million is still correct.

The Court: They arrive at $2,774,554 as the allowable amount of fixed charges. Do you agree with that?

The Witness: I think it ought to be a little lower. As I say, in our Debtor's plan, we had a figure a little lower

than that. We made the fixed charge as much as we thought [fol. 1328] could be safely carried, and there isn't very much between us, but I think my figure is a little lower than that. Understand, that is not any figure of earnings —that is simply the opinion of the Insurance Group Committee as to what the fixed charge should be, safely.

* * * * * * *

[fol. 1329] Thereupon, the Guaranty Trust Company, to maintain the issues herein in their behalf, offered and gave evidence as follows:

T. A. THOMPSON, called by the Guaranty Trust Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Fitzgibbon:

(Thereupon a document was marked for identification as Guaranty Trust Company Exhibit No. 1.)

Q. Mr. Thompson, I show you a statement marked Guaranty Trust Company Exhibit No. 1 for identification. Will you state what that is?

[fol. 1330] A. It represents a statement of payments by The Denver and Rio Grande Western Railroad Company to the Denver and Salt Lake Railway in connection with the joint operations over the lines of the Denver and Salt Lake between Utah Junction and Orestod, for the calendar years 1936, 1937, 1938 and 1939.

Q. That correctly reflects the payments made by the Denver to the Denver and Salt Lake during the period indicated by you, as shown by the books of the bankruptcy Trustees?

A. It does.

Mr. Fitzgibbon: I ask that that statement be received, Your Honor.

The Court: Any objection? (No response.) If not, it will be admitted.

Mr. Fitzgibbon: Your Honor, will you give counsel a moment to look at it?

(Thereupon documents were marked for identification as Guaranty Trust Company Exhibit No. 2.)

Mr. Clay: May I ask counsel what this is? Are these the figures on the operation by the D. & R. G. W., or the payments made to the Denver and Salt Lake in connection with that operation—the trackage contract and the lease of the D. & S. L. W.?

Mr. Fitzgibbon: I will ask that question of Mr. Thompson.

The Witness: It represents all payments by the Rio Grande to the Denver and Salt Lake Railroad under its trackage contract between Utah Junction and Orestod.

Mr. Clay: Does that include the unusual payments because of the program on the D. & S. L.?

[fol. 1331] The Witness: Yes, sir.

Mr. Clay: It is all the payments by the D. & R. G. W. to the Denver and Salt Lake?

The Witness: It is all the payments by the D. & R. G. W. to the Denver and Salt Lake under that trackage contract.

Mr. Clay: Have there been any other payments?

The Witness: There are some supplemental agreements that cover expenditures east of Utah Junction. They are inconsequential, but, nevertheless, there have been payments.

By Mr. Fitzgibbon:

Q. Those are the payments on the basis stated by you, shown in your accounting office?

A. They are.

Mr. Fitzgibbon: I might proceed, your Honor, with another exhibit, if you will withhold the ruling on Guaranty Exhibit 1.

The Court: There have not been any objections yet?

Mr. Fitzgibbon: None as yet.

The Court: Very well.

Q. What are the so-called Copeland density charts?

A. The firm of Copeland and Son, of New York, each year secure from the Rio Grande, and I believe from most of the railroads throughout the country, figures showing information as to the net and gross ton miles passing over the various parts of those railroads.

Q. I have handed you Guaranty Trust Company Exhibit No. 1 for identification, which purports to show the traffic density for the years 1935 to 1939. Have those totals that I have handed you been checked by you?

A. They have.

[fol. 1332] Q. Are those tables somewhat similar to the charts which were offered as Debtor's Exhibits 21 to 21-D and 105 before the Interstate Commerce Commission?

A. They show the same information.

Q. Except that the exhibits before the Commission were in chart form and yours are in table form?

A. That is correct.

Q. On that table that I have handed you is a reference in the upper right-hand corner to east density and west density. What does that mean?

A. It refers to the density of traffic eastbound which, in the case of the Rio Garnde, means toward Denver or Pueblo, and Westbound away from Denver and Pueblo. It refers to the density of traffic in gross ton miles and includes the equipment net ton miles load only.

Q. And those figures have been obtained from the books of the bankruptcy Trustees?

A. They have.

Q. On these tables that I have handed you there have been several calculations made, have there not?

A. Yes.

Q. Have you checked those calculations?

A. I have.

Q. Those calculations are to reduce the ton miles to average tons per mile, are they not?

A. That is correct.

Q. And those calculations are correct?

A. They are.

Mr. Fitzgibbon: I would like to have the statement received as Guaranty Exhibit 2. I think, in order for purposes later on in connection with briefing, we might have the table for 1935 referred to as 2-A; the table for 1936 referred to as 2-B; for 1937, 2-C; for 1938, 2-D; and for 1939, 2-E.

[fol. 1333] Mr. Fitzgibbon: Your Honor, I now offer Guaranty Exhibit 1 and Guaranty Exhibit 2-A to 2-E, inclusive.

The Court: Any objection? (No response.) It will be admitted.

* * * * * * *

[fol. 1334] August 7, 1940

Mr. Fitzgibbon: May it please the Court, there was circulated last week among the necessary parties to this proceeding certain supplemental information as to the Utah Fuel Company. The entire stock of that company is placed under the Western Consol Mortgage. There being no objection, I should like to offer these as Guaranty Trust Company's exhibits. I think it might be well that they be embodied in one exhibit of six sheets. Inasmuch as Exhibit 3 has not been offered and I have had no request—that is the branch line report—I would ask that there be received in evidence as Guaranty Trust Exhibit 3, Sheet 1, a letter dated July 19, 1940, of Mr. Moroni Heiner, President of the Utah Fuel Company, to Mr. Arthur E. Burke; as Guaranty Trust Company Exhibit 3, Sheet 2, a statement dated July 19, 1940 of Castle Gate Costs for the Period January 1 through June 30, 1940, and 1939, and Comparison; as Guaranty Trust Exhibit 3, Sheet 3, statement dated July 19, 1940, entitled Utah Fuel Company and Subsidiary Companies Summaries of Consolidated Income, Years Ended December 31, 1933, Through 1939; as Guaranty Trust Company Exhibit 3, Sheet 4, statement dated July 19, 1940, entitled Utah Fuel Company and Subsidiary Companies Condensed Balance Sheets—By Companies and Consolidated—At December 31, 1939; and as Guaranty Trust Company Exhibit 3, Sheet 5, a statement dated July 19, 1940, entitled Utah Fuel Company and Subsidiary Companies Condensed Balance Sheets—By Companies and Consolidation, December 31, 1933; and as Guaranty Trust Company Exhibit 3, Sheet 6, a statement dated July 18, 1940, entitled Utah Fule Company adn Subsidiary Com-
[fol. 1335] panies—Summaries of Income and Profit and Loss by Companies for the Period, January 1, 1940, Through June 30, 1940, and Summaries of Consolidated Income Through June 30, 1940, and 1939, And Comparison.

The Court: You have three exhibits here altogether?

Mr. Fitzgibbon: One exhibit with six sheets to it.

The Court: Any objection? If not, it will be admitted.

By Mr. Fitzgibbon:

Q. Mr. Thompson, I show you Guaranty Trust Company Exhibit No. 5, marked for identification. Will you please state what that is?

A. It shows the traffic density on the Denver and Salt Lake Western and the Denver and Salt Lake Railway, the movement on the Denver and Salt Lake Western being entirely by the D. & R. G. W., and on the Denver and Salt Lake as to the joint line, by the D. & R. G. W. and the Denver and Salt Lake; and on the non-joint Denver and Salt Lake, by the Denver and Salt Lake exclusively.

Q. This was prepared pursuant to a request that was made after the introduction of Guaranty Trust Company Exhibits 2-A to 2-E, inclusive, was it not?

A. That is correct.

Q. How would you get the figure for the combined operation over the Denver and Salt Lake?

A. You would simply add the joint line figures as to the D. & R. G. W. and the Denver and Salt Lake together.

Q. And that would be because the mileage remains the same, and you would not need any——

[fol. 1336] A. The Denver and Salt Lake and the Denver and Rio Grande ton-miles are figured on exactly the same mileage; therefore, you would just add them together.

Mr. Fitzgibbon: This is Guaranty Trust Company Exhibit No. 5. The title, reading it into the record, is "Net Tons (Revenue and Company) per Mile of Road, D. & S. L.-W. R. R., D. & S. L. Ry." and endorsed at the bottom, "Accounting Department, August 6, 1940."

The Court: Would you explain what that means?

The Witness: That means that the average movement over the Dotsero Cut-off proper, from Bond to Orestod, involves a total of 126,000 net tons. That does not include the car in which the load was moving, nor any movement of empties.

The Court: It means the revenue received?

The Witness: No; it does include the company's.

The Court: What proportion is the company's?

The Witness: Well, I would just have to estimate that, your Honor. I would say 10 per cent—less than 10 per cent.

The Court: Ten per cent?

The Witness: The approximate figure would be pretty close to the difference between the 772,000 and the 826,000.

Mr. Fitzgibbon: I would like to ask that this be received as Guaranty Trust Company Exhibit No. 5.

The Court: If there is no objection, it will be admitted.

(Guaranty Trust Company Exhibit 5 accompanies this record.)

[fol. 1337] Witness William Wyer

Q. Well, doesn't your answer merely illustrate the weakness of the D&RGW in competing for this transcontinental traffic? It only has a short haul and has to compete with highly competitive business; isn't that true?

A. I think it does, and that is one reason why I think you are about in the peak in your proportion of transcontinental traffic, as I have testified.

Q. That is, you are not very optimistic about the future of the D&RGW?

A. I don't think its proportion of the total will grow very much more. I think it will keep its place as to total gross.

Q. That is, the proportion of the total business of the Denver and Rio Grande Western to other groups?

A. The proportion of the transcontinental business of [fol. 1338] the Rio Grande Western to the total transcontinental of the country.

[fol. 1339] Witness C. M. Lightburn:

Mr. Wood: If Your Honor please, if it were the conven-[fol. 1340] ient way to proceed, I have some questions to ask Mr. Lightburn on an entirely different subject. On the first day of the hearing here, on cross-examination, I asked Mr. Lightburn, at pages 90 to 92 of the transcript, to obtain certain information regarding the average age and the average life of rails and ties on the D&RGW system. Mr. Lightburn has been very cooperative in trying to obtain the information which we requested, but it has not been found practicable to supply the information in exactly the form in which we requested it. However, we are prepared, through Mr. Lightburn and through another witness, whom we shall call subsequently, to present such information as is readily available on the subject referred to, and if it is convenient that we should go ahead with that now, I am prepared to do so.

The Court: All right.

(Thereupon a document was marked for identification as R&I Trustees' Exhibit No. 7.)

By Mr. Wood:

Q. Mr. Lightburn, I show you a statement entitled, "Gross Tons Rail Purchased, Including Dotsero Cutoff," showing the tons of new rail and second-hand rail purchased, for each of the years 1920 to 1940, inclusive, and ask you whether you prepared this statement, and whether the figures shown thereon are correct.

A. I prepared the statement, and the figures are correct.

By The Court:

Q. In 1922 you bought 21,000 second-hand rails? Is that correct?

A. Yes, sir, it is.

[fol. 1341] Q. And that is what was used on the Denver and Salt Lake Western?

A. No, Your Honor; that was used on narrow gauge main lines.

Q. This says second-hand rail, including the cutoff.

A. Yes, but this does not show that. It shows all rail purchased for renewals.

Q. Purchased for renewals?

A. Yes.

Q. Why do you say, then, "Including Dotsero Cutoff"?

A. Any renewals that were made on the cutoff are included in here, but not the original construction rail.

By Mr. Wood:

Q. Mr. Lightburn, adding up the figures shown in the second column, under the heading "New Rail," what is the total number of tons of new rail purchased during the years 1920 to 1940, inclusive, as shown on the statement?

A. 205,456 gross tons.

Q. And the total amount of second-hand rail shown is 26,932 tons, is it not?

A. That is correct.

Q. Do you know the total number of tons of rail in all lines of the D. & R. G. W., including also the cutoff line from Dotsero to Bond?

A. It was approximately 426,333 tons.

Q. Referring to the statement showing the gross tons of rail purchased during the 21 years 1920 to 1940, inclusive, will you please state what percentage of the total amount of new rail purchased during that period, being the figure which you gave, 205,456 tons, is to the total amount of all rail in the tracks of the D. & R. G. System, including the cutoff line from Dotsero to Bond?

A. It is approximately 48 per cent.

Mr. Wood: I offer the statement entitled, "Gross Tons [fol. 1342] Rail Purchased, Including Dotsero Cutoff" in evidence as R. and I. Trustees' Exhibit No. 7.

Mr. Anderson: I do not know what counsel's purpose is in introducing the evidence, but it does not show the weight of rail; it does not give any indication of miles of new rail; it may be 50-pound rail or 100-pound rail, or any other pound rail, and therefore gives us no idea to go on. If they have that information and propose to offer it later, it might be interesting, but I don't know what it would be interesting on to give how many tons of rail he bought.

Mr. Wood: We have a later exhibit which we are going to put in through another witness which I think will go a long way toward supplying the deficiency that is referred to.

Mr. Anderson: I object to this because it does not prove anything. He might just as well introduce a book of songs as this.

Mr. Wood: The exhibit is offered in evidence.

The Court: It will be admitted.

(R. and I. Trustees' Exhibit No. 7 accompanies this record.)

By the Court:

Q. All the rail bought by the Trustees in the last three or four years, set forth on this statement, would have been 112-pound rail, or higher?

A. 112 and 130-pound rail.

Mr. Wood: I might repeat what I said: We recognize here that the direct answers to the rather simple questions which we asked on the first day apparently could not be [fol. 1343] given, and so what we are doing here is to give what Mr. Lightburn and the other witness, whom we will present, considered to be the best information available, and is not exactly what we would have wished to put in if we could have obtained the answers to our questions.

By Mr. Wood:

Q. Mr. Lightburn, I now show you a statement entitled, "Tie Renewals and Estimated Total Ties in Track, Including Dotsero Cutoff," showing the tie renewals for the years 1919 to 1939, inclusive, sub-divided as between standard gauge ties and narrow gauge ties, and further sub-divided to show the numbers of untreated ties and treated ties. Did you prepare this statement, and are the figures shown thereon correct?

A. Yes, sir.

Q. I note that the statement shows, for the years 1923 to 1939, inclusive, the estimated total number of ties in all tracks, both standard gauge and narrow gauge. Will you please supplement the statement by telling us approximately how many ties which are included in the total figures are ties in the Dotsero cutoff line from Dotsero to Bond?

A. About 142,000.

By the Court:

Q. According to this estimate, you have got less ties in the road now than you have had for several years; is that right?

A. That is correct.

Q. Is that due to abandonment?

A. To abandonment of branch lines.

Q. You have a lot less mileage, then?

A. Yes, sir.

Q. What percentage of this estimated total ties has been [fol. 1344] relaid?

A. Approximately 90 per cent.

By Mr. Wood:

Q. The percentage figures in column 8 on the right-hand side of the statement show, do they not, for each year, the percentage which the amount of tie renewals during the year bears to the total estimated number of all ties in the track?

A. They do.

Q. If the percentage figures shown for the years 1925 to 1939, inclusive, are totalled, does it not appear that the number of ties relaid subsequent to 1924 is 103.34 per cent of the total number estimated to be in the tracks?

A. That is correct.

Q. On the basis of the figures shown on the statement, have you made an estimate of the average age at the present time of the ties in the tracks of the D. & R. G. W., including the cut-off line from Dotsero to Bond?

A. Yes. I have estimated that the average age is 9.21 years.

Mr. Wood: I now offer in evidence as R. and I. Trustees' Exhibit No. 8 the statement entitled, "Tie Renewals and Estimated Total Ties in Track, Including Dotsero Cutoff."

That is all that we have with this witness on this subject. The remainder of what we wish to put in on this subject will be put in through another witness, who will be ready immediately after lunch, at the convenience of the Court.

Mr. Anderson: Before the adjournment, may I ask a few questions of this witness?

The Court: Yes.

By Mr. Anderson:

Q. You spoke of the average age of the ties in the track. [fol. 1345] What is the average service life of treated ties on the D&RG, approximately, in this climite?

A. Our treated ties, Col. Anderson, have not been in the track long enough for us to get a historical record. We are guessing and hoping and thinking that they are going to last over 20 years on an average.

Q. Your ties are tie-plated on the line?

A. Yes, sir.

Q. Completely?

A. Completely tie-plated on the main line.

Q. Of course, you haven't the figures and experience, but you are estimating 20 years' life for the treated ties in the regular service?

A. An average on the line; possibly less on the heavy traffic lines.

Q. Of course, on curves and heavy traffic line, but the average will be about 20 years?

A. At least that.

Mr. Anderson: If Your Honor please, before I sit down, I would like to ask if counsel could not supply us with any exhibits they propose to introduce after lunch. We supplied ours well in advance of presentation. It would save us a lot of time and give us a chance to check these exhibits

if they will give them to us before cross-examination, and I will greatly appreciate it if they will do it.

(Witness excused.)

The Court: Who is your next witness, Mr. Wood?

Mr. Wood: Our next witness is Mr. Perlman. Shall we put him on now, your Honor?

The Court: Have you just a few questions?

Mr. Wood: I have only a few questions of him. Of course, I cannot say what might be asked on cross-examina-
[fol. 1346] tion, but my questions will only take a short while.

The Court: You may put him on.

A. E. PERLMAN resumed the stand for

Direct examination.

By Mr. Wood:

Q. Mr. Perlman, you heard Mr. Lightburn's testimony, have you not?

A. Yes, sir.

Q. Of the 426,333 tons of rail in the lines of the D&RGW, including the Cut-off line from Dotsero to Bond, how many tons are in the line from Dotsero to Bond?

A. There are 5,388 tons on the main line, and 2,010 tons in yard tracks and sidings, or a total of 7,398 tons.

Q. I now show you a statement entitled "Main Track Relaid or Laid with New Rail (Including that laid in turnouts) (Excluding Misc. Rail Renewals)," showing for the years 1923 to 1939, inclusive, the number of gross tons of rail laid and the number of miles of track on which such rail was laid. Did you prepare this statement, and are the figures shown thereon correct?

A. They are.

Q. The statement shows, does it not, that the average number of tons of rail laid for each year of the seventeen year period shown is, excluding the rail laid on the Dotsero Cut-off line, 10,502 tons, and that the average number of miles of track on which this rail was laid was 66.44 miles?

A. It does.

Q. What is the number of tons of rail in the main track as that term is used on the statement? That is, give the figure for the tracks, exclusive of the Cut-off line, and [fol. 1347] separate figure for the Cut-off line.

A. Exclusive of the Cut-off there are 148,697 tons. On the Dotsero Cut-off main track there is 5,388, or a total of 154,085.

Q. What is the number of miles of main track for the system, excluding the Cut-off line, and what is the number of miles of main track stated separately for the Cut-off line?

A. Our primary main track, exclusive of the Cut-off, includes 892.99 miles. The Dotsero Cut-off is 38.1 miles, or a total of 931.09.

Q. What is the average age at the present time of rail in the main track?

A. Eight and one-third years.

Q. In computing the average age did you include the average age of the rail in the Cut-off line from Dotsero to Bond, and, if so, would excluding the rail in that line slightly increase the average age for the remainder of the track?

A. I did not include the average age in the Cut-off.

Q. What do you estimate as the life of the rail in your main track, taking into account recent developments in the art of maintenance, such as building up rail ends to prolong the life of the rail?

A. Fifteen years.

Mr. Wood: I offer in evidence as R&I Trustee's Exhibit No. 9 the statement entitled "Main Track Relaid or Laid with New Rail (Including that laid in turnouts) (Excluding Misc. Rail Renewals.)"

The Court: It will be admitted.

Q. It is true, is it not, that track which is used on curves on the main line has a shorter life than the average age?

A. That is correct. The way we estimate the fifteen years, Mr. Woods, is by figuring twenty years on tangent, and an [fol. 1348] average life of ten years on curves. Some sharp curves won't last over five, and some will last fifteen, but our railroad has approximately fifty per cent of curve track and fifty per cent of tangent, and it averages out fifteen years.

Q. Yes. Well, now, as to much of this track which is used on curves on the main line, is it true that much of that

track becomes badly bent, so that when it is taken up from the main line it cannot be relaid on side tracks or secondary tracks?

A. Well, much of the heavy curvature is pre-curved for those sharp curves, so that when it is taken out of track you would get a bad curved rail to put in a tangent siding.

Q. So that in case of that type of track you cannot put it in your secondary lines after it has served its life in the main track?

A. Well, some of it is badly head worn also, and if you would put that head worn rail up against a rail that has been used in tangent, you would be liable to get derailments and have quite a bit of trouble, so that normally that rail that is taken out of heavy curves after it has served its life is scrap rail.

Q. Turning now to the subject of ties, what is your best estimate of the expected life of new untreated ties?

A. Our old records on this railroad indicate an average life of nine years for untreated ties.

Q. Mr. Lightburn said that ninety per cent of the ties were now treated. Are the remaining ten per cent of untreated ties pretty well worn out?

A. Most of them are badly decayed, and will be out within a very short time.

. . . . . .

[fol. 1349] ARTHUR RIDGWAY, called by the Debtor, being first duly sworn, testified as follows:

Direct examination.

By Mr. Goree:

Q. Your name is Arthur Ridgway?

A. Yes.

Q. How long have you worked for the Denver and Rio Grande Western Railroad and its predecessor, Mr. Ridgway?

[fol. 1350] A. Continuously for the last 45 years. Prior to that time intermittently for about eight years, I think.

Q. You are now chief engineer for the Debtor—that is, for the Trustees of the Debtor, are you?

A. Yes, sir.

Q. How long have you been chief engineer?
A. Seventeen years.
Q. Prior to that you were assistant chief engineer?
A. Yes, sir.
Q. For how long?
A. Fourteen years.
Q. Mr. Ridgway, during the time of the valuation of the properties of the Debtor, I believe you were chairman of its valuation committee?
A. That is correct.
Q. And that was a committee of some four or five or more officials of the Debtor, who had charge of this valuation work, was it?
A. I believe so. That is my recollection.
Q. Of course, Mr. Lightburn was the valuation engineer reporting to that valuation committee; is that right?
A. That is true.
Q. Mr. Ridgway, I assume you have seen Debtor's Exhibit 5, which has been introduced by the Debtor and identified by Mr. Lightburn?
A. Yes, I have seen it.
Q. I want to question you in regard to the item "Cost of Development of Property, $9,000,000." Will you tell us, please, whether the cost of reproduction new of the road accounts of the railroad company, excluding lands, correctly reflects the value of such a roadbed to a railroad company—the roadway to a railroad company?
A. No.
Q. Do you mean that there are some additional values there which are not reflected by that cost of reproduction [fol. 1351] which is determined in this hypothetical program?
A. Yes, there are additional values.
Q. Why do you say that, Mr. Ridgway?
A. Because their value accrues through time.
Q. Explain that answer, will you, please?
A. Well, if I may read my reply, instead of trying to compose it on the spur of the moment, it will be a great deal shorter.
Q. Very well.
A. The cost of reproduction new on an instant date may not exactly measure the value of an extensive and complex property when many of the parts of which it is constituted

appreciate with the lapse of time. The worth of the physical property of a particular railroad depends upon its adaptation and growth into a fitness of purpose for which it was created. There are many inseparable elements of value that accrue only through age and use. The expression of these values in monetary terms is called, for want of a better name, "the cost of physical development."

Necessity for the fitting and adaptation of the line to the natural characteristics of topography becomes apparent only through operation. Changing of line and grade and continual resurfacing and realigning of track are required before the fixed structure meets the demands of stability and uniformity for satisfactory train movement. The cost of reproduction new does not provide for this refinement nor do Road and Equipment Accounts, for its repeated expenditures are charged to Operating Expenses.

The largest single item of value of the fixed property of this company lies in the roadbed, and however exacting the specification, the reproduction cost of grading does [fol. 1352] not fully cover the element of value produced by time alone in the seasoning, weathering, and use. Even though it were possible to apply adequate unit prices to the various classes of material moved in the formation of a superior and stable roadbed, frequently all the quantities can not be inventoried. Often riprap or other roadbed protection is covered up by widening of embankments or rock and slag are placed in the emergency of washouts and hidden under the restored fills. Again, the natural disintegration of material on steep slopes loosens boulders and rock ledges which lodge within the roadbed prism whence they are removed at substantial expense with scarcely a trace of their ever having been handled. Mountain sides and canon walls are combed for quantities of boulders and unstable rocks without subsequent evidence of removal. The expense thereof is incurred for the betterment and safety of the roadbed.

In a newly constructed railroad natural slopes of repose are often disturbed and unweathered surfaces exposed in the excavation of cuts through material which on exposure disintegrates and slides or slips onto the track at lessening intervals as time goes on. Often the material of which embankments are made changes in character when exposed to the elements and slumps out of the normal roadbed prism

to form a stable footing for the restored slope and yet is not included in a reproduction inventory years later.

It is quite evident the cost of operation in transportation expense and in both maintenance of way and maintenance of equipment expenses over a newly constructed track and roadbed is higher than would normally prevail. The only [fol. 1353] rational basis that suggests itself for evaluating the betterment of the seasoning, weathering, and stabilizing process is in the excessive cost of operation for a period of years immediately following construction if such excess above normal can be approximated.

Q. Then, Mr. Ridgway, you would say it is difficult to evaluate with any degree of accuracy the value which does inhere in the old roadbed, would you?

A. Yes, it is impossible to precisely say.

Q. Do you say, then, that this nine million dollars, included in this exhibit, is the minimum amount which should be included for that purpose?

A. It is a matter of judgment, and I should say it is a minimum.

Q. Mr. Ridgway, you made this nine-million-dollar computation for presentation before the Interstate Commerce Commission at the time of its valuation of the properties of the Debtor, did you not?

A. Yes, sir.

Q. And testified in support of that contention at the hearing before the Interstate Commerce Commission?

A. Yes, sir.

Q. And the Debtor urged that point before the Commission, but the Commission refused to allow any additional value on that account?

A. That is so.

Q. Now, in the case of the D&RG, this additional value was obtained over a long period of years and had a much higher cost than you have estimated here, because of the fact that the D&RG was originally built as a narrow-gauge line; isn't that right?

A. Yes, that is partly the situation.

Q. Well, if it is not entirely correct, straighten it out. [fol. 1354] How would you express it?

A. I did not understand your question fully.

Q. Well, the D&RG was originally built as a narrow-gauge line, was it not?

A. Yes.

Q. And this additional value in its roadbed came about very slowly, did it not?

A. Yes.

Q. And at great expense because of the necessity of changing from a narrow-gauge to a standard-gauge railroad?

A. Well, the cost of the physical development, yes, to its present condition would be higher by reason of the various technical changes that have taken place in the 60 or 70 years.

Q. Was that change from narrow gauge to broad gauge made during operation? Explain that to me.

A. Oh, yes, most of it was. There was some of the property constructed standard gauge originally, but most of the property was constructed narrow gauge and then transformed or converted into standard gauge, 3-rail first, and then standard gauge subsequently.

Q. And because of the change in the way it was done, historically, would you say that the actual cost to the Debtor was in excess of the amount which you have here estimated for cost of development of the property?

A. Well, I judge it was, yes.

Mr. Goree: That is all. Is there any cross-examination of Mr. Ridgway?

(Witness excused.)

* * * * * * * *

[fol. 1355] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF COLORADO SITTING AT DENVER

No. 8669

In Proceedings for Reorganization of a Railroad

In the Matter of the DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Debtor

Excerpts from Hearing of October 23 and 24, 1942

HEARING ON PETITION FOR PAYMENT OF INTEREST ON SECURITIES

Be It Remembered that on, to wit, the 23rd day of October, A. D. 1942, this cause came on for hearing before the Honorable J. Foster Symes, Judge of the District Court of the United States for the District of Colorado.

APPEARANCES:

Henry W. Anderson, Esq., of the firm of Hunton, Williams, Anderson, Gay & Moore, for the Insurance Group Committee.

Henry McAllister, Esq., for the Trustees of the debtor, The Denver and Rio Grande Western Railroad Company.

William V. Hodges, Esq., of the firm of Hodges, Vidal & Goree, for the debtors, The Denver and Rio Grande Western Railroad Company and The Denver and Salt Lake Western Railroad Company.

Erskine R. Myer, Esq., for H. Allyn Hicks, Esq., Trustee of the debtor The Denver and Salt Lake Western Railroad Company.

William R. Eaton, Esq., for the City Bank Farmers Trust Company, as Trustee.

[fol. 1356] Mason A. Lewis, Esq., of the firm of Lewis & Grant, for the Chase National Bank of the City of New York, as Trustee.

Robert G. Bosworth, Esq., of the firm of Pershing, Bosworth, Dick & Dawson, for the Guaranty Trust Company of New York, as Trustee.

William W. Grant, Esq., and Morrison Shafroth, Esq., of the firm of Grant, Shafroth & Toll, for the Insurance Group Committee.

Langdon H. Larwill, Esq., of the firm of Lindsey & Larwill, for the United States Trust Company of New York, as Trustee.

Miss Norma L. Comstock for the Central Hanover Bank and Trust Company, as Trustee.

Emmet McCaffery, Esq., and Frank P. Lynch, Jr., Esq., for the Reconstruction Finance Corporation.

* * * * * * *

[fol. 1357] WITNESS T. A. THOMPSON

Q. The petition in this case alleges in Paragraph 1 that approximately $30,000,000 has been expended upon this property during the period of trusteeship, chargeable to capital account. I asked you if you could prepare for me a statement showing separately the expenditures charged to capital account for the D. & R. G. itself, improvements on leased lines, and total, and then divide that total between equipment and roadway structure. Have you prepared such a statement?

A. I have.

Q. Will you proceed to present it, and I shall offer it in evidence?

(Thereupon a document was marked for identification October 23, 1942, Hearing, Exhibit 1.)

Q. Is that the correct statement?

A. That is the correct statement.

[fol. 1358] Q. Those figures are made up by you or under your direction, and they are to the best of your knowledge and belief correct?

A. Yes, sir, they are.

Q. In Section 2 of the petition there are certain allegations as to the earnings of the property for this year as compared to 1941. When I say "the property" I mean the D. & R. G. Railroad, and I asked you to prepare a statement showing the actual earnings brought down to net income for the year 1941, and the actual for 1942 as far as it was available, and estimate it for the balance of the period of 1942. Have you such a statement with you?

A. I have (handing counsel document).

Q. You hand me a statement entitled "Condensed Income Account," and I will ask if the figures therein were made up

by you or under your direction, and if they are true to the best of your knowledge and belief?

A. They were and are.

(Thereupon a document was marked for identification October 23, 1942, Hearing, Exhibit 2.)

Colonel Anderson: I will offer this in evidence as October 23 Hearing, Exhibit No. 2, if you please, and I will give the stenographer four copies.

Q. In the fourth paragraph of the petition there are certain allegations as to the cash position of the Trustees' estate, and I asked you if you would prepare for me a statement showing the present cash position as of the latest date available, the estimated cash position as of the close of business on December 31, 1942, as nearly as you could make it, and would state also the obligations concerning the [fol. 1359] trust estate which might have to be met within the reasonably near future. Have you prepared such a statement?

A. I have (handing document to counsel).

Q. You hand me a statement showing the cash position as stated, with a list of obligations aggregating $14,944,112. Is that a correct statement of the situation as I have outlined it?

A. It is.

(Thereupon a document was marked for identification October 23, 1942, Hearing, Exhibit 3.)

Q. Now, I notice, Mr. Thompson, that you have included in that statement of obligations the payment of conditional sales agreements of $2,282,106. Does that refer to the purchase of these conditional sales obligations which the Trustees have recently had up and under consideration?

A. That is the exact amount.

Q. Yes. I also notice that you include in these obligations the purchase of additional freight locomotives, $3,044,706, of 1,000 freight cars, $3,582,300, of 300 dump cars, $990,000. Are you in a position to state whether that equipment is now under order, or when the delivery thereof is contemplated, or shall I have to call the Trustees on that?

A. I think you will have to call the Trustees on that.

Q. Very well. The improvement work authorized, but not completed, I assume that your answer would probably be

the same as to that because it is more of an operating problem?

A. Substantially, yes.

Colonel Anderson: Then, if Your Honor please, I would [fol. 1358] ask leave to introduce in evidence the statement identified and explained by the witness, as October 23, 1942, Hearing, Exhibit No. 3, and am prepared to distribute the same with your leave.

Q. Mr. Thompson, some reference is made in the petition and the motion which I have filed this morning to the depreciation fund, or the amounts now charged to operating expenses on account of the depreciation of equipment and the possible application thereof to this payment of equipment obligations. I asked you, therefore, in that connection to prepare for me a summary and statement showing the present amount of equipment depreciation being charged by the company, and, if any charge be made for road and construction depreciation, to furnish me a statement of that. Have you prepared such a statement?

A. I have (handing document to counsel).

(Thereupon a document was marked for identification October 23, 1942, Hearing, Exhibit 4.)

Q. The statement which you have presented to me shows the items I have indicated, and you believe those are correct?

A. I do.

Colonel Anderson: I would like leave to introduce this statement in evidence as Exhibit No. 4.

Q. Mr. Thompson, this statement of equipment depreciation, of course, only includes the present depreciation on equipment now owned by the Rio Grande, and does not include any estimate of depreciation upon the equipment suggested as proposed to be purchased upon the preceding statement I introduced?

A. This includes no equipment except what we have on [fol. 1361] hand.

Q. To the end that we might have full information as to the available resources from which interest and other charges might be paid, both of the Denver and The Denver and Salt Lake Railway Company, the latter being involved

in the plan of reorganization, I asked you if you would, with the consent of the President of that company, prepare for me a statement showing the estimated income account of The Denver and Salt Lake Railway Company for the year 1942. Have you that statement?

A. I have (handing document to counsel).

(Thereupon a document was marked for identification October 23, 1942, Hearing, Exhibit 5.)

Q. You present me a statement showing the income account of The Denver and Salt Lake Railway Company for the year 1942 for eight months actual and four months estimated. Is that a statement, to the best of your knowledge and belief, which was prepared by the auditor of The Denver and Salt Lake Railway, but you believe it to be correct?

A. Believe it to be correct.

Colonel Anderson: May I present that in evidence as Exhibit No. 5?

The Court: Why do you introduce this, Colonel Anderson?

Colonel Anderson: Simply because——

The Court: Showing that there is $581,000 that may be available for the payment of interest. It may only become available in the event of consolidation.

[fol. 1362] Colonel Anderson: No, sir, that is available for payment of interest by The Denver and Salt Lake whether there is consolidation or not.

. . . . . .

[fol. 1363] WITNESS T. A. THOMPSON

Q. I notice you have cash working balance required $1,250,000. Is that the minimum cash balance you feel you should have on hand at any one time?

A. That is what it means.

Q. That doesn't mean that is all you need to have on hand any day of the year?

A. No, you have to make provision for large payments in addition to that. That is just a working fund.

Q. And at this time of the year, say December 31st, should you have on hand that sum, or should you have on hand a larger sum?

A. Depending on your obligations that are immediately or due in the near future, some of which are indicated in that list of requirements.

Q. Which are normally, the low months of your year, when your cash balance goes down?

A. The first of July is about as low a point as you hit.

By the Court:

Q. Well, January, February and March have been your lean months in earnings, haven't they?

A. Ordinarily, yes, but your normal requirements mature in March, April, May and June, and even in July your tax payments.

Q. Generally speaking, the first six months of the year are the lean months on this property?

A. That is correct.

[fol. 1364] By Mr. McCaffery:

Q. Now, one other question, Mr. Thompson. I don't want to get you mixed up in the question of what is the fair rental of the Dotsero Cut-off, or anything like that, but, taking the agreement which, as I recall, was entered into in 1932, under which the Rio Grande was to pay, among other things, an amount sufficient to enable The Denver and Salt Lake Western to pay a five per cent dividend, have you computed what the amount due under that agreement as of December 31, 1941, would be? Can you state that figure?

Colonel Anderson: I think it is very far afield of what we are talking about here today. We don't think the agreement has any bearing on the situation, and if you paid out everything earned here, if you take a third away, you would have more than the entire interest on all the bonds of The Denver and Rio Grande this year. So why confuse the situation with something which has nothing to do with it?

The Court: The objection is overruled. He may ask him.

A. Will you repeat your question again?

Q. Have you computed the amount which would be due as of December 31, 1941, on the basis of the 1932 agreement which I described a moment ago, and can you state what that figure is?

A. $1,171,039.75. That would be to December 31, 1941.

Q. And that figure would increase at the rate of five per cent on what figure each year?

A. On $3,631,000.00?

Mr. McCaffery: I believe that is all, Your Honor. I would like to have the privilege of recalling Mr. Thompson [fol. 1365] later if it becomes necessary.

By the Court:

Q. Mr. Thompson, will you refer to this Exhibit 3, and if all the moneys are paid out there that are listed, beginning with the expenditures authorized and contemplated, you would show a deficit, would you not, on December 31, 1942?

A. Very certainly of approximately five and a half million dollars.

Q. In other words, you can't pay out all those items that are listed there and have any cash left the first of the year, can you?

A. That is right. Of course, Your Honor, most of those are not due to be paid as of December 31st.

Q. I understand, but if those payments were anticipated and made, you couldn't meet them?

A. That is right.

The Court: All right. That is all. Thank you.

Q. And the cash working balance required cannot be counted as available cash?

A. We wouldn't think it would be counted as available cash, because you do need a working fund.

Q. Necessary for payrolls and operating expenses?

A. That is right.

The Court: That is all.

By Mr. Hodges:

Q. Do you on your accounts accrue a rental of the Grand Junction line?

A. Yes, sir.

Q. Can you turn to a figure to show what the accrued rental on the Grand Junction line is now accrued and unpaid?

A. I can give you as of December 31, 1941.

[fol. 1366] Q. That is close enough.

A. $658,333.33.

Q. What is the annual accrual?
A. $100,000.00.

By Mr. Bosworth:

Q. $100,000.00?
A. $100,000.00.

By the Court:

Q. $100,000.00 a year?
A. Yes, sir.
Q. If that money was paid to them they would have to apply it on interest on their bonds?
A. Yes, sir.
Q. And that would relieve the Trustees of paying that interest otherwise?
A. The Rio Grande Junction is charged as rental theoretically, used by them to pay interest on its bonds.
Q. Instead of that, you say you have paid it in direct taxes?
A. That is correct. We happen to be auditor of both companies.

By Mr. McCaffery:

Q. Who owns the stock of the Rio Grande Junction?
A. The Rio Grande Western Railroad.
Q. All of it?
A. Subject to the lien of the Refunding and Improvement Mortgage.

By Mr. Myer:

Q. Mr. Thompson, can you accrue the obligations of The Denver and Salt Lake Western and The Denver and Rio Grande on the note of $3,110,850.00, known as the stock purchase loan?
A. No, of December 31, 1941, offhand I can't answer your question.
Q. Will you furnish me a statement of that?
A. I will have to look at the balance sheets.

Colonel Anderson: When you say "the stock purchase [fol. 1367] loan," do you mean the purchase of the Denver and Salt Lake stock?
Mr. Myer: Yes, sir.

By Mr. Hodges:

Q. The rentals under the lease of The Denver and Salt Lake road are paid, aren't they?

A. They are being paid currently.

Redirect examination.

By Colonel Anderson:

Q. Let me ask you, you have Exhibit 3, haven't you, that statement? You have been asked a number of questions about the obligations set up in Exhibit 3. I will ask the cash statement in the first two lines, as I understand it, is your actual cash to date and your estimated cash balance on December 31, 1942?

A. That is right.

Q. That is as stated. Now, as I understand it, you are not prepared to say when, if at all, the obligations for conditional sales agreements of purchases of Diesel freight locomotives or the 1,000 freight cars or the 300 dump cars will become due?

A. No, sir, I am not.

Q. With the possible exception of a few of the cars they are certain not to become due until some time in 1943, are they?

A. That is my information.

Q. Yes. Now, as to work authorized and not completed, you are not in a position to say when that will be done and when it will be payable?

A. No, sir.

Q. If it was not completed until 1943, or because of difficulty of priorities or other reasons was not completed at all, then that would affect the statement to that extent, [fol. 1368] would that not be true?

A. That is correct.

Mr. McCaffery: Why doesn't Colonel Anderson ask Mr. Swan the questions that Mr. Thompson is not capable to answer?

Colonel Anderson: Mr. Thompson was asked to answer these things.

Q. Now, the ad valorem taxes are not due until 1943, are they?

A. This, as I believe I have in the record now, covers only the first half of the Colorado taxes for 1942 which are payable on February 28th, and the last half of the 1942 for New Mexico which are payable on April 30th.

Q. April 30th?

A. That is right.

By the Court:

Q. Next year?

A. Next year.

By Colonel Anderson:

Q. Now, Federal and State income taxes, that they may accrue, certainly as to Federal are not payable until March 15th of next year?

A. March 15th of next year.

Q. So that you are giving the cash balance as of October 21st, and you are only giving those things which may accrue as of December 31st and next year to the extent they are paid?

A. To the extent that I consider them commitments against this year's earnings.

Q. But if they do not become due this year they are not payable in this year?

A. That is a debatable question. I wouldn't attempt to answer it.

Recross-examination.

By Mr. McCaffery:

Q. Do you know as to these Colorado taxes Colonel Ander- [fol 1369] son was asking about, when they become an obligation as distinguished from when they become payable?

A. Theoretically they are due on January 1, 1943, for 1942. That is the date of your tax bill, and they are then due.

Q. Is that true of the New Mexico taxes as well, do you know?

A. I am not certain about New Mexico.

The Court: That is all. We will excuse you, Mr. Thompson.

Colonel Anderson: I will offer Mr. Swan.

(Thereupon a recess of five minutes was taken.)

HENRY SWAN, being called and sworn as a witness on behalf of the petitioner, the Insurance Group Committee, testified as follows:

Direct examination.

By Colonel Anderson:

Q. Mr. Swan, you are one of the Trustees of The Denver and Rio Grande Western Railroad, aren't you, in this proceeding?

A. Yes, sir.

Q. Mr. Thompson, the General Auditor, has introduced while on the stand an exhibit showing your present cash position, the estimated cash balance.

The Court: Would you mind referring to the exhibit?

Colonel Anderson: Statement Exhibit 3.

The Court: October 23rd.

Q. Introduced a statement, October 23rd, showing your actual cash, and your contemplated cash position or estimated cash position as of December 31, 1942. He has then listed certain obligations in that statement, and it is about these that I would like to ask you. Have you a copy of that [fol. 1370] statement before you?

A. Yes, sir.

Q. Now, take the payment of the conditional sales agreements. As I understand, he testified that those are made up with your cooperation. That refers to the conditional sales agreements for equipment, anticipation of which you have had under contemplation, have you not?

A. Yes, sir.

Q. Those obligations, aggregating in round numbers $2,282,000.00, are not due at this time, are they?

A. They are payable in monthly installments.

Q. Over a period of years?

A. Yes, sir.

Q. Have you before you the amount of the monthly installments applicable to the several items making up that amount?

A. No, sir.

Q. Take them in their order. One is Electro-Motive Corporation $62,056.80, as I understand. Do you know when that is due and payable by its terms? I mean the last installment.

A. It tells right on the statement.

Q. Let's see.

A. That covers the Diesel switching locomotive for use at Remco. It was financed originally by General Motors Acceptance Corporation with the higher coupon that we were successful in transferring to a bank to handle at a lesser rate to maturity, payable monthly with interest.

Q. And you don't know now the amount of the monthly installments?

A. No, sir.

Q. You don't know when the last one is due?

A. I don't recall.

Q. But the last one will not be due——

A. Not due for several years.

Q. Not due for several years?

A. No, sir.

[fol. 1371] Q. Those installments run over a period of several years?

A. Yes, sir.

Q. That is sufficient. Now, take the Northern Trust Company, thirteen Diesel locomotives, $545,318.00. I assume you are not able to state the actual amount of the monthly installments?

A. I can't give you the monthly installments, but it is my recollection that it was placed a year last June.

Mr. McCaffery: You say "take the Northern Trust Company." There isn't anything about the Northern Trust Company in this exhibit, is there?

Colonel Anderson: No, but I have a list of them. They are included in that list.

The Witness: That covers fourteen Diesel switching locomotives that we purchased a year ago last summer or spring.

Q. And that is a part of the $2,282,000.00, round numbers, mentioned on the statement, Exhibit No. 3?

A. Correct.

Q. And that was originally placed in about June, 1941, payable in equal monthly installments over a period of ninety-one or ninety-six months?

A. It was ninety-six months.

Q. Ninety-six months?

A. Yes, sir.

Q. That would be eight years?

A. That is correct.

Q. And only a little over one year has passed; isn't that right?

A. That is correct.

Q. Now, take the next item that you furnished me as making up that, the Baldwin Locomotive Works for five steam locomotives.

A. That is $710,369.91.

Q. Can you give me the information about that substan-
[fol. 1372] tially as you have given it?

A. That was placed at about November of 1941, and was one to seventy-two months, six years.

Q. Provided equal monthly installments of payment over a period of seventy-two months?

A. Yes.

Q. That has run about one year?

A. A little less than a year.

Q. A little less than a year, and it has a little over five years additional to run on that basis?

A. Yes, sir.

Q. Now, the Electro-Motive Corporation, three Diesel freight locomotives, $964,361.00 makes up the remainder of the amount as furnished to me by you. Could you give me the same information about that obligation?

A. That was placed, I think, last February, and was on a one to seventy-two month basis, payable monthly, interest and principal.

Q. And therefore it has run about eight months?

A. That is right.

Q. Eight installments have been paid, and the remaining of seventy-two installments, that is, sixty-four installments, probably a period of a little over five years, are yet to be paid?

A. If we pay for December we will have ten installments made, and we will have then the five years and two months until the last installment is paid.

Q. Before these installments all mature?

A. Yes, sir.

Q. Now, taking up the purchase of Diesel freight locomotives, taking up the next item on this Exhibit 3, the purchase of Diesel freight locomotives, $3,044,706.00, would your tell me the status of that item as to the contract when possible delivery is expected, or whether you have any definite

[fol. 1373] information as to delivery, etc., any information you can give in regard to it?

A. We received the court order a number of months ago for the purchase of these locomotives. We placed the order with the Electro-Motive Corporation, and were promised delivery commencing September 1st and having one locomotive delivered each five days thereafter.

Q. That was a promised delivery September 1st this year?

A. Yes. In the last of July we were advised that it would be impossible for them to complete the delivery as scheduled, and they have been deferred until probably some time in the first quarter, possibly late in the first quarter, of 1943, and we are hopeful of getting them at that time.

Q. But you can't say more than that you are hopeful in view of the present condition of government control over that kind of manufacture?

A. That is correct.

Q. You can give no definite assurance as to the time of delivery, nor can they give you definite assurance?

A. That is correct.

Q. As a matter of fact, the Electro-Motive Corporation is subject to government control?

A. That is correct.

Mr. McCaffery: I think the witness instead of Colonel Anderson should testify.

The Court: I think that is correct. Let him testify instead of you.

Colonel Anderson: I wouldn't undertake to lead this witness for anything in the world. (Laughter.)

Q. Now, there is nothing payable on account of those locomotives until they are delivered?

A. No, sir.

[fol. 1374] Q. That is right?

A. Yes, sir.

Q. Now, take the 1,000 freight cars, could you give me similar information as to that, it being the next item on Exhibit 3? Any information you can give?

A. We have received court order for the purchase of these cars. We have placed our order for the construction of them with the Pressed Steel Car Company, and we have received the proper clearance from Washington for the delivery of 780 of these cars in the last quarter of this year, and 220 in the first quarter of next year.

Q. And if deliveries are made as in accordance with those assurances, the payments will have to be made at those times for the numbers you indicated?

A. As delivered.

Q. As delivered. That is the way they are payable. Have you made any arrangements for financing these obligations, that is, the obligations as to the Diesel freight locomotives and as to the freight cars, by equipment trust or any other manner at this time?

A. No, sir, we contemplate paying for them from our cash resources.

Q. You have had a good deal of experience in financing these things on equipment trusts, haven't you?

A. It is timed with the years we have been on the property.

Q. That is what I thought. You don't think there would be any trouble of financing on equipment trusts?

A. With conditions as they are at present there will be no difficulty, and in any event the Reconstruction Finance Corporation has indicated its willingness to take care of the requirements for payment on this additional equipment.

By the Court:

Q. Weren't you ordered or requested to buy these by the [fol. 1375] government for the government plants on your line?

A. There are numerous of the government plants on our line, but the two particular plants which occasioned primarily the acquisition of this particular equipment are the two steel plants, one located down near San Bernardino, California, and the other one located at Geneva south of Salt Lake and north of Provo on our line. We were advised that we were expected to be able to furnish the power and the cars to haul the coal that was to be necessary, or coke, some of the finished product, and very recently we were told that we were to handle the lime rock and dolomite for the Geneva plant from our Tintic branch. That is what occasioned the inclusion of the 300 dump cars, which is the next item. When originally contemplated, it was proposed that the Union Pacific would haul the iron ore and the lime rock or the dolomite. Just recently we have been advised that the Union Pacific was not expected to do that, but that we were, and we have already made the appropriate arrangements for the placing of the rail and sidings to acquire

the facilities that are necessary to run the lime rock and dolomite for transmission to the plant at Geneva. In addition to those which we are purchasing here, the Defense Plant Corporation, which is a subsidiary of the RFC, is furnishing to us on a rental basis, paid for by the Defense Plant Corporation, and not by the trusteeship, six steam freight locomotives. Those were originally ordered by us on behalf of the Defense Plant Corporation because of the priority position which we occupy by reason of having given the Baldwin company an order prior to this arrange-
[fol. 1376] ment. More recently, however, the WPB has ordered the locomotives constructed there by the American Locomotive Company, not from our specification, but from the specification of the Union Pacific Railroad. In addition to these locomotives, the Defense Plant Corporation will furnish to us at a rental basis 500 gondolas, flat bottom gondolas. It is our intention to come into this court shortly for authority to purchase 300 dump cars, and we hope to have them included with the 220 that will be delivered to us in the first quarter of next year under the railroad pool.

Q. Under what?

A. The ones that are allotted to the railroads for construction, so many a year.

Q. When you refer to 300 dump cars, you refer to the next item on the exhibit, I think, of $990,000?

A. That is correct.

Q. There has been no court authority for the purchase of those yet?

A. No, sir.

Q. And no obligation is figured with respect to that as yet, is there?

A. No, sir.

Q. They are something that you are going to ask court authority to buy in the future?

A. Very shortly.

Q. Yes, well, very shortly, then. Now, the improvement work authorized, but not completed, is an item in this same exhibit of $3,100,000. Could you tell me something about the status of that and the prospect of its completion, and your requirements on account of paying for that work, how they run?

A. We tentatively, in estimating our financial needs for next year, have contemplated that we would do two and a quarter millions of work on lines from an improvement
[fol. 1377] program standpoint in the first six months of

next year. That means that if we could devote that entire work solely to the completion of this work authorized, but not completed, there would only be a little less than $900,000 of the carry-over items yet to do.

Q. You mention $900,000 worth of work now authorized, but not completed.

A. In addition there will be a new improvement program which will be presented to this Court after the present peak of business is over, which we will ask for authority to do next year.

Q. That is in the year 1943?

A. That is correct. So we will probably do a part of that new work plus a part of the carry-over work in that item of two million and a quarter which I have indicated will be expended in the first six months of next year.

Q. You mean all this nine hundred and odd thousand dollars is a part of uncompleted—as a part of your authorized program for 1942 may be carried over into the 1943 year program?

A. No, I don't make it clear. In our estimate for the first six months of next year cash requirements we contemplate that we will be able to do two and a quarter million dollars of improvement work on line.

Q. During that six months?

A. During the first six months of next year. What I meant to convey was that all of that work on line work that consists solely of items in this carry-over, we would complete all but about $900,000 of the carry-over, but we will not do merely work on the carry-over. We will do some work we will present to the Court de novo. Therefore we contemplate doing only two and a quarter millions of the [fol. 1378] work on the carry-over and the newly authorized items in the first six months of 1943.

Q. Now, in order to make it comparable to the cash statement above, have you any idea of how much of that improvement work you contemplate that will be completed, and therefore have to be paid for in the remainder of this year—two months of this year?

A. I understand that this $3,100,000 is as of December 31st, but you could ask Mr. Thompson. I didn't prepare that figure.

Q. No. I understood him to say it was not. We asked him, and he said——

A. From this date on.

Q. Yes, from this date your improvement program, looking forward.

A. Well, I don't know how he arrived at the figure, because I didn't prepare it, but I do know that we will have over $3,000,000, or at least I think I know, for next year of the carry-over.

Q. In the first six months of next year. All I wanted to gather was, Mr. Swan, if you had information as to approximately how much you would have to pay for between now and until December 31st.

A. Well, Colonel, I understand in preparing this $9,557,000 estimated cash balance, it was that cash balance which remained after doing improvement work from this date until December 31st.

Q. I see. Everything in the way of improvement work will have been paid for?

A. In this year.

Q. That is what I am getting at. So this item of $3,100,000 is not anything you have to pay this year, but will be paid in a period of six months of next, provided the authorization is given by the Court which you have suggested you are going to ask?

A. Well, that is carryover. The new budget has not been [fol. 1379] presented.

Q. But all the payments you have made up to date have been already deducted in arriving at the $9,557,000.00 to December 31st?

A. That is our estimate.

Q. I mean up to December 31st all payments are deducted before arrival of that?

A. Except these items which are listed below for future delivery. Part of them might be this current year.

Q. But, as far as you know, the charges against your cash for the current year for improvements are taken care of before you arrive at the $9,557,000?

A. Yes, sir.

. . . . . .

[fol. 1380] Q. Would it be a fair statement, Mr. Swan, that as a result of the present traffic running over the road, the road is being worn out in actual operation faster than the normal rate?

A. It would be very difficult to answer that question except to this extent. It is perfectly obvious if you run 2,000,000 ton miles over a section of road instead of 1,000,000

in the same period, or have twice as much wear on the head of the rail.

Q. Are you familiar, Mr. Swan, with the recent regulations of the Interstate Commerce Commission which contemplate the possibility of setting up a reserve now for depreciation which cannot be taken care of now because of priorities or some other reason—setting up that reserve for taking care of the depreciation later?

A. I have heard it, and that is now in the hands of Mr. Thompson and Mr. Hart of Mr. McAllister's office for consideration and application in our own case.

Q. You have not set up such a reserve; and this $700,000,00 doesn't include any amount in respect of a reserve of that character?

A. No, sir.

Mr. McCaffery: I think that is all.

By Mr. Myer:

Q. Mr. Swan, in Exhibit No. 3 is your estimated cash balance of December 31, 1942, at $9,357,000,00—does that take into account any rental on The Denver and Salt Lake Western Railroad?

A. No, sir.

Q. Does it take into account any rental on The Denver and Salt Lake Railway Company line?

[fol. 1381] A. It is after payment of any rentals that may be due the Denver and Salt Lake.

. . . . . .

[fol. 1382] A. The impact of the petition that is under consideration today on the fiscal problem of the Trustees is of such a serious character that it seems to the Trustees that they should present to this Court the methods which have been adopted in their endeavor to conserve the financial integrity of the property while it is being operated by the Court, especially so as some very serious problems present themselves to the Trustees in connection with the plan which has been proposed by the Interstate Commerce Commission. The average age of the equipment on this railroad is as follows: on standard gauge locomotives it is 26.19 years old. Please bear that figure in mind, 26.19 years. The standard gauge freight cars have an average age of 22.27 years. The standard gauge passenger cars have an average age of 23.79 years. The high maintenance of equip-

ment ratio reflected in our operating statements is due in very large measure to the high average age of this equipment. The high operating ratio has been due in large measure to the high average age of this equipment. At the present time we are being forced by circumstances to contract for and acquire equipment to handle this accelerated load, and thereby we incur heavier obligations for subsequent liquidation than had been contemplated. In making an approach to the equipment problem we had a study made, not of the locomotives or of the passenger equipment, but of the standard gauge freight equipment by classes. This was done a number of years ago, in 1938 if I remember correctly. And this was done after a physical inspection of over thirty per cent of the units in every class. And we [fol. 1383] then determined to chart what we were pleased to term the economic utility of the equipment surveyed, and determine whether or not certain repairs could be given to that equipment, and keep it in life and use it for certain longer life as against an immediate purchase of new equipment. Those charts developed some rather interesting thoughts. If we were to undertake to replace the equipment too rapidly, we would not have enough available cash in the depreciation fund to take care of the down payment on the new equipment if financed either by conditional sales contracts or equipment trusts, to take care of the serial repayments upon those outstanding equipment trusts or conditional sales contracts that we contracted earlier, or had been contracted by the debtor corporation, to pay interest, and to pay the cost of repair or improvement, and I prefer to use the word "improvement" rather than the word "repair," to existing equipment on line, not only the operating expenses incident to improvement, but the capital charges resulting from such improvement. I am going to illustrate a little later on the blackboard some of this problem so you can see it more clearly, but if we put side frames on cars under Interstate Commerce Commission order, in order to effect interchange, a certain amount of that work becomes capitalized, and a certain amount perhaps would be charged to operating expenses incident to improvement. I am going to present you a chart and some statistics which have been prepared, but for the moment I think it appropriate to state that during the period of the trusteeship the operating expenses incident to improvement and the capitalized value of the improvement have averaged

[fol. 1384] $596,000 each year. Of this $596,000 about $135,000 has been operating expense and charged out of the earnings. Four hundred and sixty odd thousand dollars have been capitalized. The reason I expose that condition to you is because the problem of acquiring the money over and above the depreciation fund is one that must be cared for in some manner other than from the depreciation fund. Now, in addition to those thoughts, it had occurred to the Trustees that it was their duty to provide the interest earned under a plan proposed by the Interstate Commerce Commission, to be available when that plan should become effective, and that is one of the problems that the Trustees have kept in mind continuously. It did not occur to the Trustees, however, that it was necessary to earmark dollars, or set them off into a trust fund, provided they kept the facilities which would enable the moneys to be raised when and as they were needed on clear equipment which the Trustees might have. However, when this thought was expressed to Colonel Anderson yesterday, he presented the Trustees with a thought that they had not considered, and that was this: Does the property of the trusteeship and especially the equipment property belonging to the Trustees have a lien against it under an after acquired property clause of one or more of the defaulted bond issues of the debtor corporation? We had not considered that. There is another factor too that had been brought up at that discussion with Colonel Anderson. That was that the Interstate Commerce Commission might not look with favor upon any railroad while it was still in private ownership or the hands of the Court, approaching it for authority to issue either equipment trust certificates or the confirmation [fol. 1385] of loans in some form, if an adequate cash balance was in the hands of the railroad. Now, practically that means this, in so far as the Trustees have interpreted it. If we had good sources of credit, our cash balance could drop quite materially as against some future day when a heavy cash demand would be made on the Trustees, at which time they would avail themselves of this credit. Now, it was because of our belief that our credit was good and that we could avail ourselves of banking facilities, that we felt it to the best interest of the trusteeship in the first instance to save interest. In the second instance it was deemed desirable from the standpoint of the solvent reorganization to get behind the trusteeship as rapidly as possible all of the costs of the new equipment, not by borrowing money,

but by paying cash for the new equipment out of the swollen earnings resulting from the use of the new equipment, because of the terrific impact upon the operating statement of the railroad's future requirements, and especially in the primary post-war depression. I will illustrate that thing in this manner. Would you like to offer an exhibit, Mr. McAllister?

Q. Yes.

A. These exhibits are being offered in the interest of a clarification perhaps of the fiscal policy of the trusteeship, and you can put that in any form you want, and pass them around. Now, have you all got copies of the blueprint and the sheet? I will refer to the sheet, and we will put the blueprint aside for the moment. Refer to Exhibit 8. This is a statement of the average earnings for the years 1930 to 1941, inclusive.

[fol. 1386] By the Court:

Q. Exhibit 8?

A. Exhibit 8. That is the little sheet. You have the blueprint in your hand.

Mr. Shafroth: You have Exhibit 7. The little sheet is marked Exhibit 8.

The Witness: If you will look down you will see "Available for Interest on Funded Debt $2,362,933." Please keep that figure of $2,362,933 in mind. When you deduct roadway depreciation you take off about $700,000, and it reduces to $1,633,074. Now, bearing in mind that figure of $2,300,000, and turning now to Exhibit 7, not the blueprint, but the printed sheet which is labeled "Present and Projected D. & R. G. W. Annual Equipment Disbursements Compared with Annual Depreciation Accruals," in column 1 you will find payments on present obligations, principal and interest. In the second column you will find the depreciation charge. Now, while we are on the question of depreciation charge it might be well to point out that the Trustees have had the feeling, which I think is probably current with other railroads, that the depreciation account should take care of those items which I mentioned a while ago, namely, down payment on equipment, serial payments on outstanding equipment obligations, interest, and improvements to existing equipment. You will observe that just this current year we are $1,000,000 short in our depreciation charge of covering the situation. Now, under

some recent rulings railroads that have paid to acquire equipment to prosecute the war effort are permitted to make an amortization charge. This becomes a charge against operations, and while the funds may be earmarked, [fol. 1387] some lawyer will have to interpret the use to which they can be put and still keep within the law. I don't know enough about it, but it is obvious that if you had $2,300,000 or practically $2,968,000 you are over twice this current year's depreciation charge. Now, in addition to that, if we add the $596,000 less the $135,000 incident to improvement, or $461,000 to that sum, you have over $3,300,000 as against the depreciation charge of $1,380,000, and if you deduct $1,380,000 from the $3,300,000, that resulting in $2,060,000 net result, demand for cash if you will, you have more than enough demand for cash than you have average earnings less roadway depreciation available for the ten years or eleven years preceding this year, and you could not put through the plan proposed by the Interstate Commerce Commission. Now, then, how are we going to finance these items which we have discussed today, the cars, the Diesels? It was our purpose to utilize the available cash balance this year only to pay off the outstanding conditional sales contracts which were kept optional for this specific purpose, and it was our expectation on behalf of the solvency of the reorganized property to utilize the windfall of earnings, and thereby the cash that comes from it, for eliminating any charges to the depreciation fund from the date of purchase of the new equipment by paying for them in cash. If that be done, the figures shown on this computation will be quite different. There will not be so heavy payments on present obligations or on future obligations. The depreciation charge will not change very much in spite of the fact we are acquiring new equipment, because the old equipment is so old that it loses its depreciation value about as fast or [fol. 1388] faster than the new equipment creates additional value. So if you will observe, in the third from the last column we have made no depreciation charge because of that offset. Now, in the last grand total you will find that amortization and depreciation offset against the disbursements for the next couple of years lags behind the disbursements. After that it catches up for a bit. But if that is the period during which the reorganization becomes effective, unless the earnings step up, the lag will probably make it impossible to earn the fixed charges set up in

the plan. If anybody would like to have me do so I will illustrate this process on the blackboard. It is all set up here if I have gone too fast for you. It is easy for us to follow it because we follow the outlines in it. If you want, I will work it out on the blackboard. We would like to have the Court consider, in view of these statements and the effect and impact it will have upon the reorganization unless we are going into a protracted war period where earnings will be comparable to this year—to have the Court determine whether it is wise for us to pay off these conditional sales agreements, or whether the Court would prefer to have us leave them outstanding. The Trustees would also like to have an expression of opinion, advice and guidance as to whether they should borrow against the new equipment, or conserve the cash as much as possible to pay cash for the new equipment. It is our best expectation, or it was our best expectation prior to the presentation of this petition today, that they would be able, out of the profits and earnings of this railroad, out of the amortization fund and the depreciation fund, to pay cash for all of [fol. 1389] the equipment that is listed and presented here today, and still have on July 1st next and prior to the heavy fall business where we receive the greatest amount of our gross income, very substantial cash balance sufficient in the aggregate to care for this plan if it shall be declared effective by that time, sufficient to care for our income taxes contemplated, to care for contingencies that might arise, and be in a solvent position.

The Court: Does that conclude your statement?

The Witness: That is all unless someone wants to ask questions, or you want me to explain some of these figures.

Mr. Hodges: I would like to ask a question.

By Mr. Hodges:

Q. I will ask Mr. Swan if in his studies he has taken into consideration the problem of the income tax based on the gross operation of the property.

A. We have. This matter has been receiving study for some months by Mr. McAllister and his associate, Mr. Hart, and by our Chief Auditor, and these studies indicate we shall have very substantial payments to make, with resultant shock to our cash position, but the complete extent of this problem has not yet been finally determined.

We are prepared to take care of such contingencies as may arise in accordance with our previous approach to this problem. If we shall pay interest as petitioned and should pay off those conditional sales contracts it might embarrass us some.

Q. It sums up that you have not in these estimates that you have made taken into consideration any tax payments that may have to be made?

A. Oh, yes, in Exhibit 3 of Mr. Thompson's this morning we put in $1,300,000 federal and state income taxes. If that should not be enough we still have considered it in [fol. 1390] the matter of contingencies.

Redirect examination.

By Colonel Anderson:

Q. Mr. Swan, I would like to offer just a very few questions for clearing up some of the points which I obviously did not catch. It is very hard to make notes as you go along. You spoke of the fact that depreciation on equipment was not adequate for the year 1942 to meet your installments on equipment as shown by Exhibit 8 by about $1,000,000, and for the year 1943 your depreciation exceeds your obligations, and during that year both principal and interest by a few thousand dollars. Now, is it not a fact that your maturities of principal on most of this equipment which has been purchased runs only a period of ten to fifteen years, while the life of your equipment and the period in which it would bear depreciation runs twenty-five to thirty years, taking it as a whole?

A. That is correct, Colonel.

Q. In other words, if you were to pay off your equipment maturities on locomotives, we will say, in a period of ten years, the depreciation on those locomotives might not provide all the money necessary in that ten years to pay the amortization charges which would relieve them from any other debt, but after that debt was paid partly from depreciation and partly from the earnings, the equipment would continue to provide a depreciation fund which would go into cash to reimburse the company for the amount it had to advance to pay off those short-term installments?

A. There will be a time when the obligations will taper off, but the depreciation fund continues. I might add to

[fol. 1391] that; but that does not include the demand for the cash in the immediate future for the amortization fund and for the improvement to existing equipment.

Q. Well, your improvement to existing equipment is charged to capital, but, of course, has to be paid out of cash, and if you have accumulated a considerable amount of equipment which is free from obligation, the depreciation on that accumulated equipment could take care of the necessary money for this improvement, and is carried in the cash through operating expenses whether you use it or not; isn't that true?

A. Not in accordance with this exhibit. If I read this exhibit correctly, Colonel, we only have a depreciation, etc. of two million two hundred and fifteen thousand odd dollars, but we have disbursements this year of $3,687,000. Next year we will have an amortization and depreciation, in the last column, of three million four hundred odd thousand, and we have calls on us for $3,661,000. Now, then, I am perfectly willing to admit that on the eighth year we will have an accumulation of cash which, if you want to borrow again against your equipment in anticipation of your depreciation fund working out, it might be one method of reaching it. That is one of the things I have had in mind in trying to handle this big load. We would not think of buying this equipment under our equipment budget at this time. Our problem is: What will the Trustees do to make possible an earning capacity to justify the Interstate Commerce Commission plan? This is a fact. This is no theory.

Q. Well, Mr. Swan, I didn't mean to get into an argument of that, because the proper place for me to argue that is before the Court. All I wanted to do was to make [fol. 1392] it perfectly clear what you mean about this depreciation, and to bring out the fact that the variations which you pointed out here in available funds from depreciation, and the demands in the way of interest and amortization, were brought about by the fact that the installments of amortization did not run for the life of the equipment, and they necessarily varied on that account. In the earlier period it might be more than the available depreciation. In the later period it might be very much less than the available depreciation. That is all I wanted to bring out in that connection, and you have answered my question. Now, I didn't quite catch what you said when

you referred to my statement made on yesterday, which I didn't think you got entirely as I intended for you to get it, and I will therefore just ask you to clear up in my mind what you did say.

A. I am glad you do, Colonel, because it is a legal point and I am no lawyer. I think I mentioned yesterday in our conversation that it was in the minds of the Trustees that if the cash balance became low later, they would have free equipment on which they could again borrow if they paid off these conditional sales contracts. I think you said there was some difficulty in getting an adequate and appropriate and legal and satisfactory equipment trust from company owned equipment by reason of the after acquired property clauses on mortgages, and because of the method of ownership, and then you emphasized again the possibility that the equipment was not free anyway in the hands of the Trustees because of the after acquired property clauses in some of the mortgages of the debtor corporation. That is the impression that I got.

[fol. 1393] Q. Well, I wanted to say that I think you somewhat misunderstood me, and I want to clear it up that I did not refer specifically to that after acquired property clause, but I did say that I was inclined very strongly to the view, without expressing an opinion to you when you have a very able lawyer, that that equipment would be subject to the mortgages, any and all of these mortgages, because the use of the funds which would be allocable on the respective mortgages would give them the right to levy on the basis they contributed to this fund. I did not state the legal position.

Mr. Shafroth: That is absolutely correct. The Colonel did not mention anything about the after acquired clause.

Colonel Anderson: I was careful to avoid the legal proposition because I am not tying myself down on that, and I want to argue it.

Q. On the second question you spoke of my views of the I. C. C. position. Of course, I don't want to be put in the position of stating the position of the Interstate Commerce Commission any more than I would in stating the position of this Court in anticipation, but I do know that they have had some very serious experiences in railroads in lending on second-hand equipment, that is, equipment

which has been purchased, and the question of whether or not they could do that.

The Court: Are you testifying now, Colonel?

Colonel Anderson: No, sir, but I didn't want my statement—I am sure Mr. Swan didn't want my statement on the record quite different from what I made to him.

The Witness: No, I do not.

[fol. 1394] Q. And I think you will admit I stated that?

A. Well, you gave me a great shock when you showed me those two statements.

Q. Well, I don't want to impute to the Commission that statement as to what they would or would not do. Now, may I ask you this question: If you feel that there is a probability or a reasonable possibility that you may have to borrow money upon equipment upon which you have paid these additional sales agreements or liens, may I not suggest that it might be better, or would it be your view to let these obligations stay out, and keep your cash position, rather than paying them off and borrowing money again for the purchase of new equipment?

A. If it seems desirable to keep strong in cash or pay it out in interest, it would seem undesirable to pay off the conditional sales contracts, and then have to go back into the market sixty or ninety days thereafter and borrow on some of the newly purchased equipment. I tried to present in this thesis the apporach of the Trustees to the whole problem on a long range planning basis than for the payment of interest, which more or less erupted in our face when we were in the midst of the program.

Colonel Anderson: That is all, Mr. Swan. I may want to clear up those points.

Mr. Hodges: I would like to ask a couple of questions.

By Mr. Hodges:

Q. Mr. Swan, much of your showing there is projected on the average performance of 1930 to 1941, inclusive, is it not?

A. It is projected against 1930 to 1941 average because [fol. 1395] that was the period that apparently was taken by the Interstate Commerce Commission in the fixation of fixed charges under the new plan. And what I was trying to develop, Mr. Hodges, was what the impact of

the large use of the depreciation fund, plus the amortization fund, plus the use of funds, cash possibly, for the improvement of the existing equipment, would have on that plan, especially after you deduct the original depreciation.

Q. And if there was error in the assumption that that period fairly represents the performance of the property that may be expected in the future, either imminent or remote, it does affect the validity of your conclusions, does it not?

A. If the road shall do as well after this war period has passed as the average of 1930 to 1941 it is obvious that there will be money available for the fixed charges. If the road continues to do as well as it does in 1942, the problem does not need to concern us.

Q. Now, may I ask you another question. I notice you set up a tentative figure of approximately $700,000 a year for depreciation and road construction, and I believe you did explain that that was tentative for the moment—represented no permanent policy. What does the setting up of that depreciation have to do with your accounting of maintenance expenditures; anything?

A. The maintenance expenditures, as I understand it—I prefer you ask Mr. Thompson because he is more familiar with the Interstate Commerce Commission rulings than I am, but that maintenance is one thing, and your depreciation is another thing, and can be used primarily for capital reinvestment rather than as against current maintenance. [fol. 1396] We have the same thing on the equipment. You have a depreciation fund, but you also have maintenance of equipment. The depreciation fund comes out of your operating expense, and, as a matter of fact, it comes into the cash drawer and is paid out. In the operation of this particular railroad I think the depreciation fund was used to buy Moffat Road stock. I don't think they earmarked the dollars.

Q. I don't want to go too deeply into this question of depreciation, but you do know that over the years the railroads have resisted the setting up of road and structure depreciation as is now suggested. You are familiar with that?

A. Yes.

Q. And they did acquiesce in the setting up of an equipment depreciation?

A. That is right.

Q. And that there was in their estimation a difference in principle involved, and that they considered that the maintenance well maintained precluded inspection depreciation, and therefore resisted that setting up of that figure; are you familiar with that?

A. I am familiar with that, Mr. Hodges.

Q. But in setting up this figure you make no difference and you do not reflect that fact at all in your accounting of maintenance or additions and betterments?

A. I have not undertaken to be a salesman for these things I presented today. I am trying to present the facts and the problem that confronts the trusteeship from this fiscal angle.

By Mr. McAllister:

Q. Mr. Swan, with respect to this new equipment, either on order or prospective, the terms, whether for cash or on time, either through equipment trusts or conditional [fol. 1397] sales contracts, have not been loans, have they?

A. Under our contracts for the purchase of this new equipment the manufacturer expects to get cash. Whether we pay it out of our cash resources, whether we borrow it on conditional sales contracts, or whether we borrow it on an equipment trust, is of no concern to the manufacturers.

Q. Well, that is still an open question?

A. It has not been to my mind. We plan to pay it.

Q. In cash?

A. In cash in order not to have this charge against the operations of the reorganized company. That would preclude payment of the fixed charges if the business fell off.

Q. I was just wondering whether it might not be better to defer the acceleration of the payment of the present conditional sales agreements until that question is definitely settled?

A. That question now can be settled between this date and December 1st. If the Court shall determine that we should not pay these conditional sales contracts, that is answered. If the Court instructs the Trustees to either borrow the money under conditional sales agreements or equipment trust certificates on the purchase of additional equipment, we shall do that. We had planned to try to pay for all this equipment out of the swollen earnings so as not to impair the soundness of the plan of reorganiza-

tion. It is my best judgment that if it is not done, it will very seriously preclude or impair the capacity of the reorganized road in the post-war depression to pay the fixed charges under the plan.

By Colonel Anderson:

Q. Might I ask you a question on that? You spoke of the post-war depression, of course, as prophecy? Do you [fol. 1398] not anticipate that with the very large improvements, industrial improvements and other improvements, amounting to about thirty-one plants, according to the latest you gave me I think, that the prospective earning power of this property in the future would be very considerably more than it was in the period from 1930 to 1941, which you put it awhile ago, regardless of any conditions that it would be reasonable to anticipate?

A. We are hopeful, Colonel, that the earnings will be very much better than they were in the 1930 to 1941 period, and I did not undertake to prophesy the post-war depression.

Q. Now, is it not a fact too that you may resonably expect as a result of the very considerable expenditures which have been made for improvement purposes under the management of the Trustees, that your operating conditions and expenses will be much less as a result of those circumstances than they would have been on the road before those expenditures were made?

A. We expect that to happen, and we hope to maintain an enlarged volume of traffic.

Colonel Anderson: That is all, Mr. Swan.

T. A. Thompson, being recalled as a witness on behalf of the Trustee of The Denver and Salt Lake Western Railroad Company, testified as follows:

Direct examination.

By Mr. Myer:

Q. Mr. Thompson, you are the General Auditor of The Denver and Rio Grande that testified this morning, are you not?

A. Yes, sir.

[fol. 1399] Q. Will you state to the Court the amount of rental or interest which was accrued and unpaid on the Dotsero Cutoff agreement, and also the obligations on the note of The Denver and Rio Grande, collateralizing the note of The Denver and Salt Lake Western to the amount of $3,110,000 prior to November 1, 1935?

A. As of October 31, 1935, there was accrued on the construction notes and unpaid $48,943.88, and on the collateral notes $51,462.55.

Q. Do you have that total?

A. I haven't totaled it, no.

Q. Will you state at what rate that was accrued in percentage?

A. At four per cent.

Q. Is that the rate stated in the note?

A. No, the notes were written at five per cent.

Q. Will you also state what rental or interest has been accrued upon those obligations since November 1, 1935, to January 1, 1942?

A. I can't give you the figures separate. I can give you the total figure from the date of the first default in each case; on the construction notes $1,171,039.75, and on the collateral note $1,024,434.15. That is as of December 31, 1941.

Q. Now, is that the amount accrued after November 1, 1935, or after the default occurring prior to that date?

A. That includes all matured and unpaid interest.

Q. Both before and after the petition in bankruptcy?

A. At five per cent.

Q. At five per cent?

A. At five per cent, now.

Q. What was the designation or title of the account upon which the obligations under The Denver and Salt Lake lease were carried or accrued?

A. At what time?

[fol. 1400] Q. Well, on November 1, 1935.

A. The construction Cutoff notes were interest on unfunded debt at the time, and that is a peculiar situation.

Q. Well, what was the designation of the account; the title of the account in which that was accrued on November 1, 1935?

A. What was it called?

Q. Yes.

A. Rent for leased road.

Q. And what was the designation or title of the account on which the rental or interest on the $3,110,000 was carried on November 1, 1935?

Colonel Anderson: Mr. Myer, what is the total of $3,110,000, for my information.

The Witness: There are two accounts there.

Mr. Myer: Yes. The $3,110,000 note was dated in December, 1934, and was a note of The Denver and Salt Lake Western to the Reconstruction Finance Corporation for the purpose of advancing to the D. & R. G. funds sufficient to purchase some twenty thousand odd shares of Denver and Salt Lake Railway Company stock.

Colonel Anderson: That is what I wanted to get. By the amount I didn't quite catch the note.

Q. (Question read to the witness.)

A. I am not positive. I can't answer that question positively. I think it was interest on unfunded debt.

Q. But you are not positive?

A. I am not positive.

Q. All right. Mr. Thompson, I believe you testified this morning, or do you know what the total system revenue was in 1941?

A. $31,572,624.00.

Q. Now, if you will turn to Exhibit 2, which is the con-
[fol. 1401] densed income account——

A. I have it.

Q. I believe you testified this morning that on the eight months actual and four months estimated total operating revenues of the debtor, amounting to $53,885,005, that your estimate was that thirty-three and one-third per cent of that revenue arose from traffic which went over the Dotsero Cutoff?

A. I intended to state the thirty-three and one-third per cent applied to freight traffic only.

Q. Oh, I see. Well, how much would apply to both passenger and freight?

A. Oh, a composite figure would probably be about thirty to thirty-one per cent.

Q. So, then, of the $53,885,005 total gross revenue, about

$16,000,000 would arise from traffic over the Cut-off; is that not correct?

A. That would be my estimate, yes, sir.

Q. What was the total system revenue of the debtor in the year 1932?

A. $17,560,621.

Q. What was it in 1933?

A. $17,112,794.

Q. What was it in 1934?

A. $19,246,850.

Q. When did the Dotsero Cut-off go into operation?

A. June 15, 1934.

Q. And what was it in 1935, I mean the total gross?

A. $20,944,230.

Q. So that upon the basis of your figures in the years 1932, 1933 and 1934 the total system revenue was within perhaps a million dollars of the total revenue now going over the Cut-off; is that correct?

A. Not in 1934. 1932 and 1933 within $1,000,000.

Q. Mr. Thompson, how does the amount of total revenue accruing from traffic through the Denver gateway compare [fol. 1402] with the traffic going through the Pueblo gateway, revenue east of Pueblo for delivery west of Dotsero?

A. They are approximately equal on the last study I have made on it, which was prior to this year. I have made no study of the 1942 volume.

Q. And where does the balance of this revenue come from? I mean if your statement is correct of, say, thirty per cent in the Denver and thirty per cent in this Pueblo traffic, where does the rest of it come from?

A. We get all the traffic from the southern coal field in Colorado, and all of the local traffic to Denver and Pueblo from the east, of course, via each of the other gateways, and all of our local traffic in Utah, originating in Utah, or finding destination in Utah to and from points west of the Utah common points.

Mr. Myer: I think that is all.

Cross-examination.

By Mr. McCaffery:

Q. Mr. Thompson, in accordance with my reservation this morning of a little further cross-examination, I would like

to ask you to clear up one or two points. In the first place, referring to our old friend, Exhibit 3, in this language: "Expenditures authorized or contemplated to be provided for out of cash on hand December 31, 1942," did you prepare that language?

A. No, I did not. That is the way the question was put to me as a title, and the figures below there are mine.

Q. Well, in that language why did you regard these expenditures as payable particularly out of the cash on hand December 31, 1942? Why do you feel that that cash is par-
[fol. 1403] ticularly devoted to those expenditures?

A. I don't believe that I stated that they are necessarily devoted to that cash balance. I thought Mr. Swan undertook to explain that while he was on the stand.

Q. Well, we will let it go at that, then, Mr. Thompson. Now, are you in a position to explain the situation on this depreciation of road property, as to whether you have taken it and when you are going to start taking it, and what the Commission orders on it are?

A. The Commission's orders for 1942 make depreciation of road property optional. In other words, as Auditor for the Trustees I have served notice on the Bureau of Internal Revenue that we elected to adopt depreciation on road property for the year 1942. They, in acknowledging that, incidentally verbal, by conference, stated that they would permit us to do so provided we met certain conditions imposed by them. We have not as yet determined whether or not we could meet them. We have made our study as to what the charges to depreciation of road property would be, and it is the figure that has been set up in this exhibit for, I believe it says, approximately $700,000, the annual charges for 1943, and they would be likewise approximately the charge for 1942. Now, under the Commission's order making that optional, we would not have to set that up in our expenses for 1942, although we would be permitted, if we meet the conditions of the Bureau of Internal Revenue, to charge them against our income in our income tax return.

Q. Now, I am correct, am I not, that on June 8, 1942, the Commission by order made depreciation of roadway and structures, other than track accounts, mandatory com-
[fol. 1404] mencing January 1, 1943?

A. That is correct. Next year we must charge approximately $700,000 to maintenance of way depreciation. I believe it is Account 266, a new account.

. . . . . .

[fol. 1405] WITNESS HENRY SWAN

Q. Now, in connection with your general fairness and outlook and dealing with your financial program in general you spoke of the increased possible charges and of the business conditions following the war. I want to ask you if you recall the data which you sent us at one time when the purchase of this equipment was under consideration, which consisted, I think, of a book by Mr. Sagstetter, is it?

A. Well, the information that I think you are referring to was a recapitulation of the industries on line which had been prepared by one of our traffic department.

Q. Well, that book did refer to—I don't want to put it in evidence—that contains statements substantially to the same effect. I read it with a great deal of interest. With-[fol. 1406] out asking you where those industries—for reasons familiar to us all we don't bring those questions on the record, but can you tell me the number of such industries—the number you anticipate will continue operations after the war, and the revenues anticipated therefrom during the years 1943 and 1944?

A. It is my recollection there were over thirty industries outlined that could be served either on line, or adjacent thereto or part of the through traffic over our line, of which about two-thirds would probably continue after the war was over.

Q. And could you tell me generally what was the estimated revenue which would be derived from those industries in the years 1943 and 1944? You gave me those figures, but, unfortunately, I haven't got them with me. I think it was something like $6,000,000 in 1944.

A. Well, on just two or three of these industries it is our expectation that the gross revenue would be in excess of $5,000,000.

Q. As I recall, you stated that fifty per cent of that would be net on account of the matter of the possible heavy trainloads?

A. I don't recall the statement as to that effect, but if the traffic should stay up the profit on that additional business would be high.

Q. Your percentage of your operating revenue is based upon the level of the whole business, isn't it?

A. Yes, the higher the level of traffic the bigger the recovery on the additional business.

Q. What I meant was I had these figures given to me by you, and I just wanted to get them in the record as far as I could.

A. Well, the figure you give me here in this letter was an [fol. 1407] estimate of approximately $600,000 additional business from these special industries in 1942, or about $4,000,000 in 1943, and approximately $6,000,000 in 1944.

. . . . . .

[fol. 1408] Mr. McCaffery: There is one thing that has been running through my mind, and that is the plan of reorganization is still before the Commission, and that is it will be very helpful to the Commission to have before it the matters which have been presented and the testimony which has been taken at this hearing. I am wondering whether it would be proper for me to move that the Trustees be directed by the Court to transmit a copy of the testimony and argument to the Commission for use in connection with its consideration of the plan. If any formal motion for the reopening of the record before the Com- [fol. 1409] mission is necessary for that purpose, I shall be glad to arrange for the making of such a motion. I wonder if it would not be proper for the Trustees to submit a copy of the testimony and argument to the Commission for that purpose?

The Court: If the Commission wants it you advise them, and upon their request I will send it on. We are not advised yet officially that they want it.

Colonel Anderson: You want this evidence presented certified to the Commission.

The Court: It goes into the record, and I presume they are kept advised. I presume any proceeding here, the Commission is at once advised.

Mr. McAllister: Yes, they are furnished with the record and the proceeding. I might ask if Your Honor wants the testimony here transcribed and placed in the record.

The Court: What would you advise?
Mr. McCaffery: I might say I am ordering a copy.

OPINION

The Court: On October 17, 1942, the Insurance Group Committee, so-called, representing institutions holding minority interests in various bond issues of this debtor, and certain indenture trustees of the mortgages on the debtor's property, excepting the general mortgage, filed a petition praying for an order directing the trustees to pay interest on bonds and notes of the debtor in an amount of $2,481,812.52, to be divided among the respective issues and the Reconstruction Finance Corporation in accordance with the allocations of new securities set forth in the proposed plan [fol. 1410] of reorganization approved by the Interstate Commerce Commission on July 13, 1942, known as the Commission plan, which provides that interest shall be paid on the new bonds therein provided for when issued, from January 1, 1942.

The same parties also filed on the 23rd of October, 1942, a motion to restrain the Trustees from any redemption, prepayment or other satisfaction before maturity of the principal of any obligations incurred by them, including the deferred payment of the purchase price of equipment, or any other long term obligation incurred by the Trustees, and to withdraw any notice of such redemption, prepayment or satisfaction, if any has been given, and further directing the Trustees to set aside cash in special trust accounts equal to the total amounts to become payable by the reorganized company on all securities issued or assumed by it pursuant to the reorganization plan approved by the Commission under date of July 13, 1942, as if such plan had been consummated on January 1, 1942, and that withdrawals from such funds shall be made only for the purpose of paying accrued interest on the new securities provided for in such plan, or existing securities.

An answer and objections to said motion were filed by the Trustee of The Denver and Salt Lake Western Railroad Company and by the Reconstruction Finance Corporation. The motions were heard and argued on the 23rd and 24th of October, 1942, at the conclusion of which the Court denied the petitions, stating it would file a memorandum opinion.

[fol. 1411] It will be observed that the moving parties asked to have interest paid in proportions allocated according to the proposed plan of reorganization of the Interstate Commerce Commission of July 13, 1942. It is novel that these parties should recognize and rely upon this proposed plan in view of the fact that the said plan has not been finally approved by the Commission, and not certified to this Court for its consideration as required by the Bankruptcy Act. Further, these moving parties have filed objections to said plan with the Commission and are pressing the same, and, if defeated there, it may be assumed that they will renew their objections when the matter comes before this Court, and may later vote against it if it is approved and submitted to the securityholders in accordance with the Bankruptcy Act.

This plan of the Interstate Commerce Commission referred to is the third that has been promulgated. The first proposed by the Commission was strenuously opposed by the proponents of these motions and other interested parties before the Commission and this Court, and after full hearing was rejected by the Court and returned to the Interstate Commerce Commission with the Court's own suggested plan. The latter was not approved by the Commission. The Interstate Commerce Commission thereafter held further hearings, and put out the plan referred to of July 13, 1942, which these moving parties are on record as objecting to. For the reasons stated there is no certainty that the said plan will ever be adopted or become effective, and we have no reason to assume for the purposes of this motion or otherwise that this plan and its allocation of new [fol. 1412] securities will ever be finally adopted or approved by the Commission, the Court, and the securityholders.

This is the fourth time that this property has been in the hands of this Court in bankruptcy, the second time under the present judge.

This motion indicates that these creditors have not learned the lesson indicated by the past history of the property, which demonstrates that its financial difficulties have been due primarily to the insistence, by the bondholders and their trustees, upon the payment of interest on watered securities, even though not earned. This particular reorganization proceeding was precipitated by the fact that the

debtor, in order to stave off bankruptcy, borrowed from time to time just before bankruptcy over $12,000,000 from the Reconstruction Finance Corporation for the following purposes; to pay one or more unearned installments of interest on its Consolidated and Underlying Mortgages, interest on its Refunding and Improvement Mortgage, and to purchase certain ties the debtor had under contract. It borrowed further funds from the Reconstruction Finance Corporation to pay interest on its General Mortgage, and current taxes due the State of Colorado for two succeeding years. And later the debtor secured further loans from the Reconstruction Finance Corporation to construct the Denver and Salt Lake Western—otherwise known as the Dotsero Cut-off. In addition it caused the Reconstruction Finance Corporation to make loans to The Denver and Salt Lake Western Railroad Company, which the latter, in turn, loaned to the debtor to acquire the control of The Denver [fol. 1413] and Salt Lake Railroad—otherwise known as the Moffat Road.

The only criticism that can be made of the Reconstruction Finance Corporation is that it loaned money to this debtor when it was bankrupt, thus enabling it to stave off bankruptcy and make its financial condition worse when it finally came into court. In view of this it is hard to understand the present hostility that these moving parties have shown to the Reconstruction Finance Corporation as a creditor, or explain the conflicting views each takes on the controversial points that have arisen in the course of this proceeding.

This particular motion was precipitated evidently by the plans of the Trustees, Mr. McCarthy and Mr. Swan, to pay out of cash on hand $2,282,106.00 of Trustees' obligations representing the balance due on certain Diesel engines and switchers; five steam locomotives and three Diesel freight locomotives, and to pay cash for certain equipment on order and soon to be delivered.

It is true, as argued, that during the last year and a half the earnings of this property have increased out of all proportion, and show a greater per cent of increase than any other Class 1 railroad in the Western territory. The gross for the current year it is estimated will be over $50,000,000.00 as against $31,000,000.00 for 1941.

The financial program of the Trustees to which objection is made is as follows:

[fol. 1414] Estimated cash balance January 1, 1943, before payment of conditional sales agreements		$10,057,000
Requirements:		
Balance (Dec. 1, 1942) on conditional sales agreements as follows:		
Electro-Motive Corporation (assigned to Omaha National Bank) covering one 1,000 h.p. Diesel switcher purchased to serve Denver Ordinance Plant	$62,057	
Northern Trust Co., Chicago, covering 13 Diesel switchers acquired summer of 1941 to handle increased business account defense effort	545,318	
Baldwin Locomotive Works (assigned to City National Bank and Trust Co., Chicago), covering 5 steam locomotives acquired 1941 and being amortized as Defense Project under War Dept. Necessity Certificate WD-N-3303	710,370	
Electro-Motive Corporation (assigned to First National Bank of Denver), covering three 5400 h.p. Diesel freight locomotives acquired 1941 and being amortized as Defense Project under War Dept. Necessity Certificate WD-N-3303	964,361	2,282,106
Equipment on order:		
Six 5400 h.p. Diesel freight locomotives being built by Electro-Motive Division, General Motors Corporation, to handle traffic developed by Defense Plant Corporation (Columbia Steel) steel mills near Provo, Utah, covered by Rio Grande Purchase Order 7051, 2-17-42. (Delivery, originally scheduled for Sept.-Oct., 1942, postponed because locomotive plant capacity being devoted to Navy orders)		3,044,746

1,000 70-ton gondolas to handle Provo Steel traffic, Rio Grande Order 12283 7-3-42 (Supplemented 9-29-42) (780-'42 220-'43)	3,582,300
300 Dump cars to be acquired for handling of limestone and dolomite to new steel mills near Provo (Not ordered but desired at once and trying to get secondhand. Offer made to purchase 160 at 1,500.00.)	990,000
Cash required to complete work authorized by Court but not yet performed	3,700,000
Estimated 1942 Income Tax Payments	1,300,000
Cash working fund required	1,250,000
Total Cash Requirements	$16,149,152

[fol. 1415] All of this equipment is necessary, in the opinion of the Trustees, for the proper operation of the property under war conditions, to serve promptly and efficiently the many government war plants established on the line of this railroad, as well as the tremendous increase in bridge traffic consisting of thousands of troops and quantities of war munitions en route to the Pacific Coast and in the opposite direction. Most of this equipment has been ordered at the special request of the government. Washington has told the Trustees just how much equipment they must have, for instance, to serve the new Columbia Steel Plant being built on the line of this railroad near Provo, Utah, and also that 2,000 new cars are necessary to haul coal from Utah to the new steel plant in southern California.

The moving parties objecting say:

> "No avoidable payments should be made, particularly any retirement before maturity of equipment obligations for the payment of which at maturity funds will be provided through charges for equipment depreciation, in such manner as to prejudice the payment in 1942 of such accruals of interest under the Commission Plan."

It is the view of the Court and its Trustees that these greatly increased earnings—which it is said justify the payment of the interest—are the direct result of the present

war emergency. Conservative management and business principles dictate that all expenditures incurred to provide the necessary facilities to handle this increased business should be paid from such revenues and not passed on as a debt to the new corporation when it takes over the property under the reorganization.

It is true, as alleged, that $30,000,000 has been paid out [fol. 1416] in rehabilitation of right-of-way, shops and equipment. To some of these expenditures the parties have from time to time objected. The tremendous business this property is now doing as a transcontinental carrier of war material and troops has amply justified these expenditures as well as the Trustees' financial policy.

The duty of the Court in this respect is stated by the Court of Appeals in Van Schaick v. McCarthy, 116 Fed. 2d, 987, in which the propriety of some of these expenditures was raised, the Court saying at page 983:

> "During that period the railroad company must be operated by the trustees under the supervision and control of the court in the public interest and for the protection of the private interests involved, and to that end such expenditures must be made as are reasonably necessary to preserve and protect those interests and maintain the integrity of the railroad, so that it may be turned over to the reorganized company as a going concern. Sec. 77 contemplates that the reorganized road shall be a living, not a dying, railroad enterprise. To permit the competitive position of the road to be lost during the period of reorganization would greatly endanger the future earnings upon which the plan is to be largely based and out of which the reduced fixed charges are to be paid."

The expenditures proposed (supra) are reasonable and necessary to preserve and protect the interests of the securityholders, and maintain the integrity of the railroad as a going concern so that it may be turned over to the new company in reorganization as a going concern. But there is the additional reason at this time, to wit, the duty of this railroad as a transcontinental transportation facility under war conditions to meet the demands of the Government. The demand is that the Trustees borrow the money to pay [fol. 1417] for new equipment rather than to pay for it out of cash on hand and thus save over $100,000 in interest.

If this equipment is purchased and paid for in full, after reorganization is completed the new owners can still use it as collateral for further loans.

It is also urged that the estimated cash balance of $10,057,000 as of January 1, 1943, can be safely distributed at this time. Sight is lost of the fact that the first six months of every year have been the lowest in the earnings of this property. It has always been necessary to carry over January 1st of each year a large cash balance to meet taxes due the last of February, to complete improvement work already authorized by the Court and not yet performed, and to meet other large expenditures during the first six months of the year when earnings are small.

The motion and the argument in support thereof disclose a marked cleavage between the business policies of the Trustees and these creditor institutions. The Court believes in old-fashioned finance, desiring to pay its own obligations incurred during trusteeship and those resulting from the war emergency ahead of interest on defaulted obligations which the Court inherited, and while these revenues exist. It would thus trim its sails and be in as safe a financial condition as possible when the inevitable slump comes as it is bound to within the next few years.

Mr. Justice Hughes, in Carpenter v. Wabash Ry. Co., 309 U. S. 23, at 27-28, said:

> [fol. 1418] "We have held that earnings, while a railroad is in possession of the court and operated by its receivers, 'are not necessarily and exclusively the property of the mortgagees' but are subject to the payment of claims which have superior equities as they may be found to exist," citing authorities.

Furthermore, the granting of this motion would open the gateway to a flood of applications for the diversion of these swollen earnings, such as the payment of rent due the Reconstruction Finance Corporation for the use of the Denver and Salt Lake Western (the Cut-off), and likewise rent on the Junction railroad, and many other pending claims now quiescent. The Court is also informed that payment of past due interest would raise a very serious income tax situation which cannot be determined with any degree of exactness in advance.

Counsel strongly urge the Court to defer its judgment to that of these trustee institutions of New York, emphasis

being laid upon their experience and judgment in large financial affairs, especially railroads. This brings to mind the fact that it is some of these same trustees who have dictated the policy of this railroad, and are responsible for the money borrowed to pay interest not earned and current expenses such as taxes already referred to. Millions of dollars have been borrowed by the Trustees during the seven years they have been in charge of this property. Their obligations have been met with such promptitude, often in advance, as to establish in the money markets of the country such a credit rating that when they need temporary funds, unlike other roads in reorganization, they are able to borrow money without resort to any of the lend-
[fol. 1419] ing agencies of the Federal Government, to none of which are the Trustees at present indebted. Before this railroad came into the hands of the Court, it borrowed money on equipment obligations at the rate of five to five and a half per cent, while the Trustees have borrowed several millions of dollars on Trustees' certificates at the rate of three and a quarter per cent and some as low as two per cent and less.

A somewhat similar question was presented to Judge Davis of the District Court of St. Louis (who has had perhaps more experience in railroad reorganizations than any other Federal judge) in the matter of the St. Louis & Southwestern Railway Company, 17 Fed. Sup. 68. The question there was that the trustees asked authority to make certain expenditures to build and purchase new engines and passenger coaches, and the railroad trustees, as here, desired to pay for it in cash. The trustees under three general mortgages of the company asked that the railroad trustees be directed to negotiate equipment trust certificates for the financing thereof, and at the same time petitioned for the payment in cash of certain defaulted interest installments under the railroad's second mortgage income bond certificates. The debtor deemed that the trustees' cash position and its present and prospective earnings fully justified the expenditure of cash for the building of the locomotives and the purchase of the coaches. The Court held, first, that it was without authority to increase indebtedness in reorganization proceedings by authorizing the issuance of additional securities, stating the Bank-
[fol. 1420] ruptcy Act does not contemplate such an action

unless it is essential for the continued operation of the railroad as a common carrier, and, further, that the custom of railroad financing whereby railroad equipment is ordinarily financed through equipment trust issues was insufficiently persuasive to authorize the trustee of a railroad in reorganization to finance necessary equipment where the trustees had sufficient cash with which to pay for the equipment. The Court further held that current expenses arising out of operation of the business constitute claims prior to those of the bondholders, and must be paid by the bankruptcy trustee out of available funds, and, finally, that trustees of the railroad in reorganization would be allowed to finance essential equipment out of cash available rather than by issuing trust equipment certificates so that a portion of the cash could be used to pay defaulted bond interest, since, under the rule which makes claims for operating expenses during receivership prior to bondholders' claims, expenditures, though chargeable to capital account, are entitled to some preferred status. And, finally, that the District Court in which the railroad has filed a petition for reorganization should not, in exercising its discretion, increase the indebtedness which the railroad seeks to decrease; but, where cash is on hand to pay for necessary additions and replacements, the Court should authorize expenditure of such cash for such purpose.

[fol. 1421] On appeal the Circuit Court of Appeals of the Eighth Circuit affirmed (Bankers Trust Co. v. Henwood, 88 Fed. 2d, 163). The Court, speaking through Judge Stone, held that an order of the District Court in a corporate reorganization proceeding, authorizing the trustee to purchase rolling stock for cash, was made in the exercise of discretion which could not be reviewed. In the case at bar, as in that case, the Court is really asked to incur additional indebtedness by the issue of equipment certificates in order that cash in the hands of the Trustees may be used to pay interest on defaulted obligations. In the Circuit Court of Appeals the appellants took exception to the following from Judge Davis' opinion:

> "The debtor came into this court to reduce its debts through a plan of reorganization. Certainly the approval of a new form of indebtedness, which almost of necessity must be binding on the successor or reorganized company, thereby increasing the funded debt,

> when the trustee has or will have sufficient cash on hand to pay for the essential equipment, is within neither the letter nor the spirit of the law."

Asserting a custom of long standing whereby railroad equipment is ordinarily financed through equipment trust issues the Court of Appeals observed: "There is no authority to the effect that equipment must be so financed, and the fact that such procedure is customary, if that be the case, is not sufficiently persuasive to alter the equities or logic of the situation."

In Southern Railway Co. v. Carnegie Steel Co., 176 U. S. 257, the Supreme Court observed that they had refrained from laying down any rule controlling in every case, involving the rights of unsecured creditors of a corporation in the [fol. 1422] hands of a receiver to have their demands paid out of net earnings in preference to mortgage creditors, stating:

> "But it may be safely affirmed upon the authority of former decisions that a railroad mortgagee when accepting his security impliedly agrees that the current debts of a railroad company contracted in the ordinary course of its business shall be paid out of current receipts before he has any claim upon such income; that, within this rule, a debt not contracted upon the personal credit of the company, but in order to keep the railroad itself in condition to be used with reasonable safety for the transportation of persons and property, and with the expectation of the parties that it was to be met out of the current receipts of the company, may be treated as a current debt."

This would seem to be ample justification for the policy of the Trustees who in their discretion wish to finance current needs for equipment and improvements out of the earnings as far as they will go. It would seem to be a matter of discretion which the Court should not interfere with, especially when, as here, the moving parties acquiesce in the views of the Trustees as to the necessity for this new equipment.

The Court, from its own knowledge of this property and its physical needs, knows that as a result of the tremendous business the property is now doing, there is a constant and

enormous depreciation in the rolling stock and right-of-way. This is especially true of the motive power evidenced by the fact that engines are now turned about at terminals and sent out again without proper time for shopping and maintenance repairs. Further, in order to handle the business [fol. 1422a] the Trustee have leased from other railroads eighteen locomotives. Before long it will be necessary to authorize another budget of expenditures for improvements to take care of this wear and tear that the roadway and its equipment is being subjected to, and which it is impossible to renew due to the number of trains passing over the line and priority requirements for materials.

In conclusion, I am of the opinion that the Trustees have not abused their discertion in the use they propose to make of current earnings. The motions should be and are denied.

[fol. 1423] In the District Court of the United States Within and for the District of Colorado, Sitting at Denver

No. 8669

In the Matter of the Denver and Rio Grande Western Railroad Company, Debtor

In Proceedings for the Reorganization of a Railroad

Excerpts from Hearing of April 14 to 16, 1943

Petition and Supplemental Petition of the Trustee of The Denver and Salt Lake Western Railroad Company for Payment of Rental by The Denver and Rio Grande Western Railroad Company, and Petition of the Moffat Tunnel Improvement District in Support Thereof

Be It Remembered that on, to wit, the 14th day of April, A. D. 1943, the same being one of the regular juridical days of the November term, A. D. 1942, of said court, this cause came on for hearing before the Honorable J. Foster Symes, Judge of the District Court of the United States for the District of Colorado, on the petition and supplemental petition of the Trustee of The Denver and Salt Lake Western Railroad Company for payment of rental by The Denver and Rio Grande Western Railroad Company, and peti-

tion of the Moffat Tunnel Improvement District in support thereof.

[fol. 1424] APPEARANCES:

George D. Gibson, Esq., of the firm of Hunton, Williams, Anderson, Gay & Moore, of Richmond, Virginia, and William W. Grant, Esq., and Morrison Shafroth, Esq., of the firm of Grant, Shafroth & Toll, for the Insurance Group Committee.

Messrs. Henry McAllister, Thomas R. Woodrow, and John L. J. Hart, for the Trustees of the debtor, The Denver and Rio Grande Western Railroad Company.

William V. Hodges, Esq., of the firm of Hodges, Vidal & Goree, for the debtors, The Denver and Rio Grande Western Railroad Company and The Denver and Salt Lake Western Railroad Company.

Erskine R. Myer, Esq., for H. Allyn Hicks, Esq., Trustee of the debtor The Denver and Salt Lake Western Railroad Company and the Moffat Tunnel Commission.

Mason A. Lewis, Esq., of the firm of Lewis & Grant, for the Chase National Bank of the City of New York, as Trustee.

Robert G. Bosworth, Esq., of the firm of Pershing, Bosworth, Dick & Dawson, for the Guaranty Trust Company of New York, as Trustee.

Messrs. Langdon H. Larwill and Daniel K. Wolfe, of the firm of Lindsey & Larwill, for the United States Trust Company of New York, as Trustee.

Miss Norma L. Comstock and Norman H. Comstock, Esq., for the Central Hanover Bank and Trust Company, as Trustee.

Emmet McCaffery, Esq., counsel, James L. Homire, Esq., special counsel, and James A. Marsh, Esq., for the Reconstruction Finance Corporation.

[fol. 1425] Messrs. Peter H. Holme and Milton J. Keegan, of the firm of Dines, Dines & Holme, for the City Bank Farmers Trust Company, as Trustee.

C. H. Anderson, Esq., Assistant Attorney General of the State of Colorado.

Richard K. Paynter, Jr., Esq., for the New York Life Insurance Company.

Eugene A. Schmidt, Jr., Esq., for the Metropolitan Life Insurance Company.

William J. Kane, Esq., for the Railroad Credit Corporation.

J. Fred Schneider, Esq., for the Untermeyer Family Group.

. . . . . .

[fol. 1426] HENRY SWAN, a witness called and sworn on behalf of the Trustee of the debtor, The Denver and Salt Lake Western Railroad Company, testified as follows:

Direct examination.

By Mr. Myer:

(Thereupon documents were marked for identification Insurance Group Exhibits 1, 2, 3, 5 and 6.)

Mr. Myer: By stipulation of counsel, Insurance Group Exhibits 1, 2, 3, 5 and 6 are offered in evidence. Do you want to see these, Mr. McCaffery?

Mr. McCaffery: I want a copy of them.

. . . . . .

[fol. 1427] T. A. THOMPSON, a witness called and sworn on behalf of the Trustee of the debtor, The Denver and Salt Lake Western Railroad Company, testified as follows:

Direct examination.

By Mr. Myer:

Q. Will you state your name?

A. T. A. Thompson.

Q. What position do you occupy with the debtor?

A. General auditor.

Q. How long have you occupied that position, Mr. Thompson?

A. Since July 1, 1937.

Q. And you are presently occupied in that capacity?

A. Yes, sir.

[fol. 1428] Q. I hand you a document marked Salt Lake Western Exhibit 1. I will ask you if that was prepared in your office, and ask you to state what it is.

A. It was prepared in my office, and is a general balance sheet of The Denver and Rio Grande Western Railroad Company as of December 31, 1942.

Q. That statement accurately reflects the accounts and records in your office, does it?

A. It does.

Mr. Myer: I offer in evidence S. L. W. Exhibit 1.

Q. Mr. Thompson, I hand you a document marked S. L. W. Exhibit No. 2, and ask you to state what that is.

A. The condensed income account of The Rio Grande Western Railroad for the year 1942 and two months of 1943.

Q. Will you state what that exhibit shows as to the total operating revenues of The Denver and Rio Grande for the year 1942, and also the net?

A. Total operating revenues are $54,475,496.76.

Q. What is the net?

A. Net income $11,306,965.60.

By the Court:

Q. How is that; after all fixed charges?

A. That is after all fixed charges.

(Thereupon a document was marked for identification S. L. W. Exhibit No. 3.)

By Mr. Myer:

Q. Mr. Thompson, I hand you a document marked S. L. W. Exhibit 3, and ask you to state what that is.

A. It is a statement of freight traffic and system revenues thereon moved via the Dotsero Cut-off for the years 1937 to 1942, inclusive.

Q. Will you read the item "Per Cent of System Revenue [fol. 1429] Accruing On Business Moving Over or Via the Dotsero Cut-off" at the bottom of the page in each of the years 1937 to 1942?

A. 1937, 25.02 per cent; 1938, 27.44 per cent; 1939, 28.52 per cent; 1940, 29.05 per cent; 1941, 31.43 per cent; and 1942, 33.79 per cent.

Q. Was that instrument prepared in your office?

A. It was.

Q. Does it accurately reflect the figures that appear upon the accounts and records of The Denver and Rio Grande?

A. As near accurate as we could make it.

(Thereupon a document was marked for identification S. L. W. Exhibit 4.)

Q. Mr. Thompson, I hand you a photostatic copy of a document, the copy being marked S. L. W. Exhibit 4, and ask you if that document was prepared in your office from the books and records of the Denver and Rio Grande Railroad?

A. It was.

Q. Will you state what that exhibit purports to show?

A. Payments by the Rio Grande Western Railroad to The Denver and Salt Lake Railway Company in connection with joint operation between mile post 1.5 on the northwestern terminal and Orestod for the calendar years 1936, 1937, 1938 and 1939.

Q. Do you know, and if you do know, will you so state, whether or not the obligations of the Denver and Rio Grande under the Joint Trackage Agreement with the Denver and Salt Lake have been paid in full to date?

A. They have.

Q. This exhibit, as I understand it, shows the amounts of those payments in the years 1936, 1937, 1938, and 1939, does it not?

A. It shows the amounts charged in those years. The payments may have overlapped a little bit.

(Thereupon a document was marked for identification S. L. W. Exhibit 5.)

[fol. 1430] Q. Mr. Thompson, I hand you a photostatic copy marked S. L. W. Exhibit 5, and ask you if you can identify that, and what it purports to show?

A. It is the continuation of the previous exhibit, covering the years 1940, 1941 and 1942.

Q. Will you state the total amounts charged or paid in the years 1940, 1941 and 1942 by the Denver and Rio Grande to the Salt Lake under the terms of the Trackage Agreement as shown by that exhibit?

A. For the year 1940, $867,607.00; for the year 1941, $995,307.00; for the year 1942, $1,295,300.00.

Q. Mr. Thompson, have you prepared an exhibit or are you able to testify regarding what amount of cash of the Denver and Rio Grande has been used since the October hearing of 1942 for the purchase of equipment obligations as then contemplated?

A. I have data with me that will enable me to answer your question I think.

Q. Can you give us a statement of the cash on hand on December 31, 1942, of the Denver and Rio Grande?

A. Nine million eight hundred fifty-nine thousand five hundred and nine dollars and fifty-six cents.

Q. Have you a statement of cash on hand of the Denver and Rio Grande at the present time?

A. As of the close of March 31st the balance was $13,488,418.47.

By the Court:

Q. Was that after all your taxes had been paid?

A. No, all the taxes have not been paid. There is a lot of taxes yet to pay.

Q. You mean federal taxes and Colorado?

A. Colorado taxes due on February 28th have been paid.

Q. No income tax?

[fol. 1431] A. We paid our first quarter of federal, Colorado and Utah. Out of that March 31st—the Colorado was not paid out of that March 31st balance, however. That was paid since then.

Mr. Myer: I think that is all.

Cross-examination.

By Mr. McCaffery:

Q. Mr. Thompson, following up what Mr. Myer was just asking you about, at the hearing regarding the payment of interest in October, 1942, you presented, did you not, a statement showing the amount of cash which was anticipated would be on hand on December 31, 1942, and what commitments there might be against that cash?

A. I did.

Q. Have you or can you in effect bring that statement down to date? That is, can you tell us which of those uses have now been taken care of, and also what commitments you feel there are against the present cash?

A. I will give commitments of the same character. I don't know as I can make any statement on all commitments.

Q. And so that we may be clear on the relation of that exhibit to this one, will you state which of the commitments that were then spoken of have now been disposed of?

A. Well, we paid off on December 1st the conditional sales agreements amounting to $2,282,106.00. That is the principal amount of those agreements outstanding on that date, and as of March 31st we have paid out $792,006.00 for the

purchase of 221 of 1,000 freight cars. We had likewise paid approximately $450,000.00 in 1942 ad valorem taxes payable this year. We have also paid the last quarter of railroad unemployment taxes, and have paid the first quarter [fol. 1432] of income taxes, aggregating $2,180,000.00. That is federal and state income taxes. Actually we have paid more than that on the income taxes for the reason that we have purchased tax notes to the extent of $1,600,000.00, of which we still have $1,200,000.00 on hand.

Q. Those are the commitments to which you referred last October that have now been disposed of?

A. Yes.

Q. What do you feel are the commitments now existing against the persent cash in a similar way?

A. Well, we still have on order the six Diesel freight locomotives to cost approximately $3,044,000.00, the balance of the order for 1,000 freight cars which means approximately $2,750,000.00 yet to pay, and we have on order 250 ton flat cars estimated to cost $715,000.00, and ten Diesel electric switching locomotives estimated to cost $785,000.00.

By the Court:

Q. Have you steam locomotives on order?

A. The steam locomotives are on order, but are to be paid for by Defense Plant Corporation and leased to The Denver and Rio Grande. Well, we still have, of course, the uncompleted portion of our improvement program. I can't tell you what that amounts to.

By Mr. McCaffery:

Q. Are you informed, Mr. Thompson, as to what are the present practical possibilities of your securing the freight equipment and locomotives which you referred to, that is, whether you are actually going to get them?

A. As is the case with most equipment, I certainly am not in a position to make a positive statement we are going to get them.

Q. For instance, with regard to those ten Diesels, Mr. [fol. 1433] Thompson, am I correctly informed that you expect to actually get about three of those in the reasonably near future?

A. Are you talking of the ten switching locomotives?

Q. The ten Diesels you spoke of.

A. We have only six of those contemplated, and three of those, my latest information is, are to be delivered in April and May. The switching locomotives, two of them have been delivered just within the past ten days, and the other eight I believe are coming.

Q. Now, the Court referred, Mr. Thompson, to steam locomotives being acquired with the cooperation of the Defense Plant Corporation. I believe that the terms of that arrangement have been covered in a recent petition and order by the Court in these proceedings; is that correct?

A. I believe there was an order entered on April 9th, authorizing the execution of the lease and agreement.

Q. I believe Mr. Myer put in the record as part of the Salt Lake Western Exhibit 1 the earning statement of the Denv and Rio Grande for the two months of January and February, 1943. Are you in a position to advise us what the earnings for the month of March were, or have they been computed?

A. We have nothing but our preliminary estimates, and they show a net income of approximately $900,000.00 for the month of March.

Q. Can you tell us, Mr. Thompson, how the months of January, February and March, 1943, compare with the months of January, February and March, 1942?

A. You mean gross?

Q. Well, I had in mind net, but either gross or net or both I think will give us the comparison.

[fol. 1434] A. I can give you the gross figures. I don't have any net figures of the property. The gross revenues for the first two months show an increase of $4,122,410, or 68.39 per cent, and for the month of March the estimated revenue is $5,835,000, and I haven't figured the per cent increase, but I believe it is 69.

Q. One other minor point, Mr. Thompson. I believe in the October, 1942, hearing some reference was made to the fact that the Commission has required, beginning January 1, 1943, that depreciation be accrued on certain fixed assets, and at that time you stated that you estimated the amount of such depreciation would run about $700,000 a year. Is that still a fair estimate?

A. Yes. A little bit higher.

Q. Take the January, February and March, 1943 figures which you have given us, do they include a monthly accrual for that item?

A. They include an expense accrual for depreciation of road property.

Q. How about the year 1942? I believe you testified that you had an optional possibility of taking it for that year. Did you in fact take it, and did the 1942 earnings which you have given us include that?

A. We didn't take it, and therefore they do not reflect any charges to depreciation on road property.

Mr. McCaffery: If Your Honor please, there are one or two additional minor exhibits which I may need Mr. Thompson to identify, which are not at the moment available, but I presume Mr. Thompson will be available perhaps later in the day. Thank you, Mr. Thompson.

Redirect examination.

By Mr. Myer:

Q. All of these exhibits from 1 to 5, which I have shown [fol. 1435] you, Mr. Thompson, were prepared in your office and under your direction, were they not?

A. They were.

Mr Myer: We offer in evidence S. L. W. Exhibits 1 to 5. I think that is all.

Cross-examination.

By Mr. Gibson:

Q. Mr. Thompson, I am told that the Interstate Commerce Commission has recently extended in large measure the emergency rate increases?

A. I have nothing except what I have seen in the papers on it up to this time.

Q. Would you be able to tell us the approximate amount, what that would mean on the basis of 1942 effective of that year?

A. That would have been effective—I have a close figure on the amount of those increases for the part of 1942 that they were effective, and that was approximately $2,000,000.00. I am speaking of the freight increases only, not the passenger increases, and on the basis of the revenue at its present scale, and eliminating the figures on an annual basis, would affect the Rio Grande somewhere between two and a quarter and two and three-quarter million dollars.

By Mr. McCaffery:

Q. Is that gross or net, or before the net income tax?

A. That is gross. We are in the income tax bracket now, subject to income tax.

By Mr. Gibson:

Q. What is the amount of the federal income tax liability disclosed in your income tax return filed on March 15th of this year?

A. I don't have it with me, but the figure is approximately $1,760,000.00.

[fol. 1436] Q. Have you any estimate what that figure will be in respect of 1943?

A. No estimate for the full year. We accrued $900,000.00 for the first two months of the year.

Q. Whatever basis you used in that accrual, followed for the full year, what would the total accrual for the full year be?

A. $5,400,000.00.

Q. So far as your estimate is now available, that is the presumptive range?

A. I have no idea what the revenue is going to be for the balance of the year. That is just taking the net taxable income for the first two months, and that is a round figure, of course.

Q. Is there now pending in respect to the Rio Grande an application for wage increases?

A. As regards the Rio Grande and all other railroads, yes, sir.

Q. Can you tell us approximately what is the total amount per year that is involved in that issue to the Rio Grande?

A. On the full demand?

Q. Yes.

A. Three and a half to four million dollars.

[fol. 1437] By Mr. Schneider:

Q. The $900,000 which you have set up for accrued taxes, does that include the income taxes for the States of Colorado and Utah?

A. It does not. It is purely an estimate, and is based on approximately 40% of our net income subject to Federal taxes.

Q. That is only for Federal taxes?
A. That is right.

[fol. 1438] L. L. PRATER, a witness called and sworn on behalf of the Trustee of the debtor, The Denver and Salt Lake Western Railroad Company, testified as follows:

Direct examination.

By Mr. Myer:

Q. Will you state your name?
A. L. L. Prater.
Q. Are you employed by The Denver and Salt Lake Railway Company?
A. I am.
Q. In what capacity?
A. Auditor.

The Court: What?
The Witness: Auditor.

Q. How long have you been so employed?
A. Since May, 1932.
Q. You are presently engaged in that occupation?
A. That is right.
Q. Mr. Prater, I hand you a document marked S. L. W. Exhibit 6, and ask you if you know what that is, and state what it purports to show.
A. It is a daily cash statement of the Denver and Salt Lake Railway Company for April 6, 1943, showing the net cash balance as of that date.
Q. Will you state what that net cash balance is shown to be?
[fol. 1439] A. $156,292.07.

The Court: Is that cash on that particular day?
The Witness: Yes, sir.

(Thereupon a paper was marked for identification as S. L. W. Exhibit 7.)

Q. Mr. Prater, I hand you a document marked S. L. W. Exhibit 7 and ask you if you can identify that, what it is?

A. This is a statement of income, profit and loss, and general balance sheet of The Denver and Salt Lake Railway Company as of December 31, 1942.

The Court: That is for a year, is it?

The Witness: That is for the year ended December 31, 1942.

The Court: All right.

(Thereupon a paper was marked for identification S. L. W. Exhibit 8.)

Q. Mr. Prater, I hand you a document marked S. L. W. Exhibit 8, and ask you to identify that and state what it purports to show.

A. This is a statement of the income account for the twelve months ended December 31, 1942, for The Denver and Salt Lake Railway Company.

Q. Will you state what that exhibit shows in reference to the gross income of The Denver and Salt Lake Railway Company?

A. The gross income for the year 1942 was $2,880,758.56.

Q. And the total, or, rather, the net income?

A. The net income was $83,909.68.

Q. Now, is that after payment of bond interest and taxes and other fixed items?

A. Yes, sir.

(Thereupon a paper was marked for identification [fol. 1440] S. L. W. Exhibit 9.)

Q. Mr. Prater, I hand you a document marked Salt Lake Western Exhibit 9, and ask you to identify that and state what it purports to show.

The Court: This is Salt Lake Western?

Mr. Myer: This is Denver and Salt Lake.

A. This is a statement of the income account of The Denver and Salt Lake Railway Company for the month of January, 1943.

Q. Will you state what the exhibit shows as the total operating revenues?

A. The total operating revenues were $296,155.18.

Q. And the net income?

A. $82,402.16.

Q. That is for the month of January, 1942?

A. 1943.
Q. 1943?
A. Yes, sir.

(Thereupon a paper was marked for identification S. L. W. Exhibit 10.)

Q. Mr. Prater, I hand you a document marked S. L. W. Exhibit 10, and ask you to identify it and state what it is, and what it purports to show.

A. This is a statement of The Denver and Salt Lake Railway Company, showing the income account for the month of February, 1943, with a total operating revenue of $262,911.88, and the net income $83,911.60.

Q. Is that after provision for taxes and bond interest and other fixed items?

A. Yes.

(Thereupon a paper was marked for identification S. L. W. Exhibit 11.)

Q. Mr. Prater, I hand you a document marked S. L. W. Exhibit 11, and ask you to identify it and state what it [fol. 1441] purports to show.

A. This is a statement showing the amounts expended under Article III of the Joint Trackage Agreement between The Denver and Salt Lake Railway Company and The Denver and Rio Grande Western Railroad Company, dated October 15, 1928. It shows the amount of money that has been expended under that article of the Joint Trackage Agreement, in the amount of $1,133,754.22.

Q. Do you know the total amount of obligations in money called for by that article?

A. $1,250,000.

Q. Then, of the amount of $1,250,000, the limit stated in Article III, the Denver and Salt Lake has expended $1,133,754.22, in compliance with that article, is that correct?

A. That is right.

(Thereupon a paper was marked for identification S. L. W. Exhibit 12.)

Q. Mr. Prater, I hand you a document marked Salt Lake Western Exhibit 12——

The Court: You are saying Salt Lake Western, is that right?

Mr. Myer: Yes, the exhibit number.

Q. —Salt Lake Exhibit 12, and ask you if you know what that is and can identify it and state what it purports to show.

A. This is an excerpt from the minutes of the meeting of the Board of Directors of The Denver and Salt Lake Railway Company held on February 23, 1943, wherein the interest payable on the income mortgage bonds was declared to be six per cent.

Q. Was there an authorization for the payment of this interest?

A. There was.

[fol. 1442] Q. Was it paid?

A. It was.

Q. Will you state the total amount of The Denver and Salt Lake income bonds outstanding?

A. $11,000,000.

Q. Even?

A. Even.

Q. Mr. Prater, these exhibits which I have handed you, S. L. W. Exhibits 6 to 12, inclusive, were prepared in your office and under your supervision and at your direction?

A. Yes, sir.

Q. Do they correctly reflect the data and information upon the books of The Denver and Salt Lake Railway Company?

A. They do.

Mr. Myer: I offer in evidence S. L. W. Exhibits 6 to 12, inclusive.

You may have the witness.

Mr. Gibson: I have only one question.

Cross-examination.

By Mr. Gibson:

Q. I notice in your monthly statements of income for January and February, 1943, being S. L. W. Exhibits 9 and 10, you show income above $82,000 or $83,000, which is roughly the same amount that was shown for the full calendar year of 1942. I wanted to ask you whether this is not true, that the annual statement is after deductions of full contingent interest of $660,000 on the Salt Lake in-

come bonds, whereas no part of such deduction was made in the monthly income statement, is that correct?

A. That is correct.

Q. That explains why the difference?

A. Yes.

Mr. Gibson: Thank you.

. . . . . .

[fol. 1443] Mr. Gibson: If I may say so, I think the record would be improved if I could identify on the record our previous exhibits, which are not now mentioned in the transcript.

Insurance Group Exhibit 1 is the Phipps-Hughes Agreement relating to the purchase of minority stock of the Salt Lake.

Insurance Group Exhibit 2 is the Salt Lake report to stockholders for 1940.

Insurance Group Exhibit 3 is the Salt Lake report to stockholders for 1941.

Insurance Group Exhibit 4 has been reserved for the [fol. 1444] Salt Lake report to stockholders for 1942, and I ask if it may be stipulated that should that document become available before decision by the Court, that it may be admitted in the record.

Mr. Myer: We have no objection.

Mr. McCaffery: On that hypothesis, we do not object.

Mr. Gibson: It is a condition, not a hypothesis.

Insurance Group Exhibit 5 is the Rio Grande report to stockholders for 1940.

Insurance Group Exhibit 6 is the Rio Grande report to stockholders for 1941.

Insurance Group Exhibit 7 has been reserved for the Rio Grande report to stockholders for 1942, and subject to the same condition, I should like to stipulate that it may be admitted when available.

Mr. Myer: We have no objection.

. . . . . .

[fol. 1445] OPINION

The Court: Anyone else want to be heard?

This matter has been pending before the Court, as pointed out in argument, for many years. I see no reason why it should not be decided at this time, rightly or wrongly.

The Salt Lake Western Railroad is certainly entitled to know whether it is going to get any rent for the use of its property. The Court is firmly of the opinion, as it has expressed heretofore, that the Moffat Tunnel, the Dotsero Cut-off and the Salt Lake Railway are public enterprises in which the people of the State of Colorado have a large public interest, especially the taxpayers of the Moffat Tunnel District who have obligated themselves in the sum of over $15,000,000 in bonds to construct this tunnel for the use of these railroads. The public interest in this property is very large, as evidenced by the appearance here of the Moffat Tunnel Commission and also the State of Colorado through the Attorney General.

The agreements here in question were drawn with the idea of effecting a through route from Denver to Salt Lake, and the net result has been to create an additional transcontinental line from the Missouri River to the Pacific Coast. This has been emphasized in the last two years by the tremendous amount of war material and soldiers this route has carried from east to west and vice versa for the Federal Government in the aid of the war effort. The Moffat Tunnel route is now established as a transcontinental route. Were it not for the tunnel this situation would not obtain, and I am one of those who believe that [fol. 1446] as time goes on the use of the tunnel and this short cut line will greatly increase, although I do believe that the Pueblo gateway will always handle more business than the Denver gateway. That has been indicated by what the road has done to date, and I think that will continue. Nevertheless, there will be a large increase of business through both gateways, due to the fact that the Rio Grande railroad and its eastern and western connections at Salt Lake is now established as a transcontinental line.

This whole proceeding is equitable, because, of course, bankruptcy is governed by equitable principles, and for that reason I can see no reason why a bankrupt debtor has the right to take possession of and use the property of a corporation, here the Salt Lake Western Railroad, to the exclusion of everybody else without paying anything for it.

For that reason this rent should be paid in the way I shall hereafter indicate, but before that we have the question of the adoption and approval of these agreements. These have been in existence for a long time. They have

received the approval of the Interstate Commerce Commission and all other bodies, public and private, whenever the question of their necessity or need has been litigated or discussed.

For that reason the order of the Court will be that these agreements in question will be ratified and approved by the Court.

Now, when it comes to the payment of interest, I think the one note, the note that I will designate as the construc-
[fol 1447] tion note, which represents the money lent by the R. F. C. for the construction of the Dotsero Cut-off, stands in a much better position than the other note, which merely represents money borrowed and used by the Rio Grande to acquire the title and capital stock of the Moffat Railroad.

The order therefore will be that the interest on the so-called construction note be paid. As to the stock purchase note, Mr. Myer has frankly admitted his position was not as strong. The Court reserves decision on that question.

On this question of income taxes, the Court is not fully satisfied, and does not feel able at this time to make a decision. I will ask counsel to file briefs in fifteen days on that question relating to the payment of the income tax, whether that shall be paid by the debtor, or by whom, or in what way it shall be handled. You may exchange briefs in fifteen days, and answer each other's briefs in five days thereafter.

Now, in regard to the other question, the Junction bonds, the Court expresses no opinion and has none at this time. The only observation I will make at present is that if anybody wants that matter decided, upon bringing it to the attention of the Court in the usual manner, by giving notice, we will give him an early hearing, and have a complete discussion of it so the Court can decide that question. It seems to me it should be decided. If the people interested therein feel that there have been delays, they are on notice
[fol. 1448] now that they may have the matter determined at any time they want to bring it up on proper notice.

Are there any other questions now that the Court has to pass upon?

Mr. Myer: I suppose I will draw a form of order and submit it to counsel.

The Court: Draw up a form of order, yes.

Mr. Myer: I will have to send it East for approval, so it will be several days.

Mr. McCaffery: If Your Honor please, we have gathered during the discussion here that this may have some effect on the plan, and the Commission no doubt will be much interested in what has taken place here. Would it be in order for me to move Your Honor to instruct the Trustees to send a copy of the transcript to the Commission for its information and consideration?

The Court: You mean the entire transcript?

Mr. McCaffery: Yes, Your Honor.

The Court: It will be pretty expensive, won't it? If you desire, I suppose it can be done.

* * * * * * *

Mr. Gibson: May I ask one other question: If it be Your Honor's decision to direct that a transcript of this hearing be certified or otherwise transmitted to the Interstate Commerce Commission, I wonder if you would not also direct that they be furnished with a transcript of the hearing of May 7, 1936, which was on the same petition of the Salt Lake Trustee, and which was largely relied on by Mr. Myer in this hearing?

[fol. 1449] The Court: That is already in the printed record.

Mr. Gibson: No, that was a transcript of a hearing that was not copied into the printed record. My request, of course, is addressed only in the contingency that it has not been transmitted, or if it has not been it may be.

The Court: Provided the Commission requests it.

Mr. Gibson: If Your Honor please, it was primarily relied on by Mr. Myer as a part of his affirmative case, and we stipulated that this should be a part of the record, to save Your Honor's time and to save the time of counsel. It dealt chiefly with this issue, and the Commission should not have a fragmentary record. If they have anything that was said here, it should be the whole record. I think that is a reasonable request, Your Honor.

The Court: Where is that transcript?

Mr. Myer: I have a copy of it, but I should hate to lose it.

Mr. Gibson: It can be easily reproduced at a very small expense. The issues are large enough to justify the expense.

The Court: All right, it is so ordered.

[fol. 1450] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF COLORADO, SITTING AT DENVER

No. 8669

In Proceedings for Reorganization of a Railroad

In the Matter of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Debtor

Excerpts from Hearing of September 13, 14 & 15, 1943

HEARING ON OBJECTIONS TO PLAN OF REORGANIZATION AND PETITIONS FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED BY COUNSEL AND OTHERS

Be It Remembered that on, to wit, the 13th day of September, A. D. 1943, the same being one of the regular juridical days of the May term, A. D. 1943, this matter came on for hearing before the Honorable J. Foster Symes, Judge of the District Court of the United States for the Judicial District of Colorado.

APPEARANCES:

Messrs. Henry W. Anderson and George D. Gibson of the firm of Hunton, Williams, Anderson, Gay & Moore, and Morrison Shafroth, Esq., of the firm of Grant, Shafroth & Toll, for the Insurance Group.

Messrs. E. R. Campbell and John Q. Dier of the firm of Brock, Akolt & Campbell, as attorneys for Chase National Bank of the City of New York in its capacity as holder of a secured note of debtor, but not as Trustee under Denver and Rio Grande Western Railroad Company Refunding [fol. 1451] and Improvement Mortgage 5s due 1978 and 6s due 1974.

Edward E. Watts, Jr., Esq., of the firm of Mitchell, Capron, Marsh, Angulo & Cooney, and Messrs. Hagnar Holme and Milton J. Keegan of the firm of Dines, Dines & Holme, for City Bank Farmers Trust Company.

Frank H. Heiss, Esq., of the firm of Rathbone, Perry, Kelley & Drye, Max D. Melville, Esq., and Miss Norma L. Comstock for Central Hanover Bank and Trust Company, as Trustee, intervener.

Messrs. Lewis & Grant, and Arthur A. Gammell for Chase National Bank of the City of New York, as Trustee under

The Denver and Rio Grande Western Railroad Company Refunding and Improvement Mortgage dated February 1, 1924, intervener.

William V. Hodges, Esq., of the firm of Hodges, Vidal & Goree, for debtors The Denver and Rio Grande Western Railroad Company and The Denver and Salt Lake Western Railroad Company.

Gail L. Ireland, Esq., Attorney General of the State of Colorado.

Messrs. Lindsey & Larwill for United States Trust Company of New York.

Erskine R. Myer, Esq., for Moffat Tunnel Improvement District, Moffat Tunnel Commission, and H. Allyn Hicks, Esq., Trustee of the debtor The Denver and Salt Lake Western Railroad Company.

H. H. Larimore, Esq., for the Missouri Pacific Railroad Company.

Messrs. W. Meade Fletcher, Jr., and James L. Homire, [fol. 1452] for the Reconstruction Finance Corporation.

Edwin S. S. Sunderland, Esq., and Robert G. Bosworth, Esq., for Guaranty Trust Company of New York, as Trustee and intervener under the Western Consol 4s.

Messrs. J. F. Schneider and William L. Cohn for the Untermyer Family Group.

Messrs. Charles R. Enos and Percival Jackson for George A. Gaston et al.

Henry McAllister, Esq., for the Trustees of The Denver and Rio Grande Western Railroad Company.

W. A. W. Stewart, Esq., for the United States Trust Company of New York.

* * * * * * * *

[fol. 1453] Excerpt from Hearing September 15, 1943

Arthur E. Burke, called and sworn as a witness, on behalf of the debtor, testified as follows:

Direct examination.

By Mr. Hodges:

Q. Will you give your name?

A. Arthur E. Burke.

Q. You are an officer of the Guaranty Trust Company of New York?

A. I am.

Q. Will you state what office you have?

A. Vice President.

Q. Your mortgage has deposited under it the stock of the Utah Fuel Company——

A. That is correct.

Q. —as collateral for the Western Consolidated?

A. Yes.

Q. What we call the Western Consolidated?

A. Yes.

Q. Will you give the appropriate title of that mortgage?

A. The Rio Grande Western Consolidated Mortgage, due 1944.

Q. And that stock is in your possession?

A. It is.

Q. Has the Guaranty Company been watchful of the operations of that coal company since this reorganization proceeding was initiated?

A. They have.

Q. Now, what is the character of the reports of that operation which you have received?

Mr. Sunderland: May I interrupt before the witness [fol. 1454] answers? If Your Honor please, I object to this line of inquiry. In the first place, the Supreme Court has held, as I view their decisions, that evidence dealing with the period up to the closing of the case before the Commission, may not be inquired into in a hearing of this kind, which is a hearing on the Commission's approved plan. Any evidence that has to do with any exceptional circumstance or event following the closing of the case, in our view of the holding of the Supreme Court, may be considered by Your Honor, but to go over the evidence that is before the Commission, on which it based its decision, at this time, as a matter of review, or going into the question of anything before the Commission, is entirely irrelevant and immaterial, and I object to this line of inquiry.

The Court: What is your authority?—the Milwaukee case?

Mr. Sunderland: Yes.

The Court: Will you point out the language you have in mind?

Mr. Sunderland: With reference, now, to the Supreme Court decision in Group of Investors vs. Milwaukee, it says:

"As we have indicated in the Western Pacific case, the power of the District Court to receive additional evidence may aid it in determining whether changed circumstances require that the plan be referred back to the Commission for consideration."

The Court: What page is that?

Mr. Sunderland: It is in 318 U. S., at Page 542, about the middle of the page. "The question put to the witness [fol. 1455] deals with the earnings of the Utah Fuel for the period covered by the evidence before the Commission, and it has nothing to do with any changed circumstance with respect to the record made before the Commission.

The Court: Read the question.

(Last question read.)

The Court: Wasn't that before the Commission?

Mr. Hodges: No, Your Honor. In the first place, the Commission had nothing whatever to do with fixing the amount of the claim as proved in this court. It has absolutely nothing to do with it. That is part of the job of this Court. So that the language of the Supreme Court has only to do with those findings that the Commission has something to do with. In the second place, this is a preliminary question, and I will ask him if he got the reports, when we come to the reports, and then we will see if I am asking him about anything that anybody testified to before the Commission.

The Court: He may answer. I will reserve decision.

The Witness: Will you read the question?

(Last question read.)

A. Well, we received periodical reports. We received, of course, annual reports, and I believe we received quarterly reports.

Q. Now, what do they cover?

A. Well, they cover the usual things a report of that character would cover—the earnings, the asset position—the usual financial reports of the company.

Q. Do they cover the operating details?

[fol. 1456] A. Yes, of that company.

Q. The amount of coal sold?

A. The amount of coal sold.

Q. The amount received for it?

A. Yes, I believe so.

Q. The expenses incurred in mining?

A. Yes, I believe they do.

Q. And transportation, and all the other items that would be chargeable against the amount received, in order to determine the amount earned; is that correct?

A. Well, I don't know. It might be. I haven't the reports here, and I haven't looked at them within a reasonably short time, as to each item of transportation, and so forth.

Q. I am not asking you for the items.

A. I know, but you put the words in my mouth.

Q. Well, what I wanted to ask you was, a full characterization of reports.

A. All I can say is that we have received statements, yes, as to the operations, the number of tons of coal, the cost, and other items, but as to those items, I couldn't say offhand, such as transportation.

Q. You were asked the other day if you had any of those reports here.

A. I was asked by you, and I said I did not bring them along.

Q. And it is true that you have none of those reports here?

A. I brought no reports along whatsoever.

Q. I am referring to the reports of the Utah Fuel Company. That is what I am speaking of.

A. Yes.

Q. Have you any memorandum made up by you from those reports with you?

A. I have not. I did not anticipate I would go on the stand and be asked any questions about it, or to give any evidence.

[fol. 1457] Q. Was there reported to you any information as to the growth, if any, of the market for the coal from that property?

A. You mean over a short period? I don't know as I understand your question.

Q. Well, I take it that that could be answered as to a long or a short period.

Mr. Sunderland: If Your Honor please, I request that the period be indicated.

Mr. Hodges: I will indicate the period when I find out that he really is going to be helpful or whether he is not.

If he is going to be helpful, I will ask him to the extent to which he can be helpful.

Q. Has any information been given to you respecting long-term contracts for the output of that property?

A. Will you define "long-term"? I know there have been contracts signed, but as to their duration I am not certain.

Q. Within what limits is that uncertainty? Would you say, with assurance, that they would run for two years?

A. I believe so.

Q. Would you say, with assurance, that they would run for ten years?

A. No, I could not.

Q. Well, as between those two extremes, where is the period of time when you would become hazy as to your knowledge of the length of service entered?

A. Right from the very start, because I am not certain whether those contracts, frankly, were for one year, or two years, or ten years. I know there were certain contracts entered from time to time, but as to their duration I am just not at all certain now.

[fol. 1458] Q. Of course, what I should like to know from you is, first, what the profits of that operatio. have been since the date that the last testimony was taken before the Interstate Commerce Commission. Now, I will get that date for you. It should be in this record, but it is not. It will take me some little time to get that date.

A. Well, the date would not help very much, Mr. Hodges, because I do not know what those earnings are, offhand. As I said before, I did not come prepared to testify on anything on the Utah.

Q. I understand, but I would like to get this date.

The Court: Can anybody find that date?

Mr. Anderson: I am sure it was early in 1941.

Mr. Gibson: May 20, 1941.

Mr. Hodges: May 20, 1941. We will insert that date, and then have the question read. Will you read it?

(Pending question read as follows: "What I would like to know from you is, first, what the profits of that operation have been since the date that the last testimony was taken before the Interstate Commerce Commission, May 20, 1941.")

Mr. Hodges: I think he answered that. Will you read the answer?

(Last answer read.)

Q. Now, it is perfectly possible, Mr. Burke, for you to say that you do not know what those earnings were, and at the same time you have in your mind an approximate figure; is that true?

A. No, not altogether. I have seen the earnings, yes, [fol. 1459] going back approximately two years for the date, and I have seen the earnings for 1941, and I have seen the earnings for 1942, and possibly for this year, but as to the exact amount of those earnings, or even the approximate amount of earnings, with war taxes and other taxes, I just would not want to say; it would be pure guesswork; I might be way off.

Q. Now, in your watchfulness over the security that is behind the bonds of your bondholders, you haven't fixed in your mind any figure approximating the income from this Utah Fuel stock; is that correct?

A. No, it is not correct.

Q. Then you have a figure approximating the income of the Utah Fuel stock?

A. Well, any figure I have in my mind I do not think is fair to give, because I don't know whether that figure is correct.

Q. When you speak about "correct," you mean you cannot say that it would be an audited figure; is that so?

A. I mean I am not absolutely certain what those figures are. As I say, I have not looked at them for the purpose of testimony, which I did not expect to give. I see a good many figures every day, and a good many things.

Q. I can understand that. Yesterday I referred to a telegram which refers to a report of the Utah Fuel Company for the year 1942, showing net surplus for the year of $415,000. Does that figure correspond fairly closely with your recollection of what it was for that year?

A. Yes, it does.

Q. And in the period from January 1 to July 31, 1943, the surplus was $535,869. That is the half-year of 1943. [fol. 1460] A. Do you mean the earnings—the surplus of earnings?

Q. Yes.

A. That sounds possibly correct.

Q. You have had, I take it, no figure showing an estimate for the total earnings of 1943?

A. I don't think so. I have seen some earnings, but as to whether that was projected through the balance of 1943, I don't believe it was, with the question of income taxes coming in there.

Q. That was the figure of $877,609, as representing the earnings for the year—estimated earnings for the year 1943?

A. Well, as I say, I don't recall any estimate for the balance of 1943.

Mr. Hodges: I think that is all.

The Court: Is there any cross-examination? That is all, Mr. Burke.

(Witness excused.)

Mr. Hodges: I would like to make a statement of facts that I do not think anyone would dispute. I had sent for Mr. Thompson, but he is not here. The Court's Trustees have not considered that this Utah Fuel stock was at all in their care, and have not kept the Utah Fuel accounts. That is my information.

The Court: Is that correct, Mr. McCarthy?

Mr. Hodges: And the Fuel Trustees have not considered the Utah Fuel stock as a part of your trust, and have not kept accounts on it.

Mr. McCarthy: Well, I do not know what accounts were kept by the Utah Fuel. I take it that Mr. Thompson might have made the reports. I do not know what Mr. McAllister required, nor what examination had been made. Surely [fol. 1461] we should not be prosecuted for having some interest in the Utah Fuel Company; at least, I am convinced that the ownership was so remote and contingent that we at least should not be indicted; and not long ago—I don't know whether you want this in the record or not—the matter was again brought to my attention, and intimated that there was still a possibility of something like that occurring. So that inasmuch as it was contended that we had an ownership in this stock, a remote ownership which was contrary to the Elkins Act, that therefore we should stay just as far away from it as possible.

That is about all I know about it.

Mr. McAllister: I can confirm what Judge McCarthy says, and from that time there was nothing kept in the Rio Grande books about the Utah Fuel.

[fol. 1462] OPINION

The Court: Is that all, gentlemen? Anybody else have anything more? Apparently the time has come in this proceeding when the Court is required to pass upon this plan. It it not the first one that has been proposed in this matter, as you all know. The debtor and the parties themselves have proposed plans which were rejected by the ICC, and the Court of its own motion submitted a plan which it felt really met the situation at the time, but that was for good reasons, undoubtedly, rejected by the Commission.

It seems to me in passing upon this plan the Court should take into consideration the fact that this litigation should sometime be terminated and brought to an end, and the property returned to the people who own it. The federal courts are not equipped to permanently run a railroad, any more than they are any other enterprise. However, the Court feels, and I think all the parties should realize, that the property has been well managed during the period that it has been in the court. This is due, of course, to the splendid service performed by the two Trustees, Mr. McCarthy and Mr. Swan, to whom too much praise cannot be given for the present condition of the property. When they took it over it was a wreck. There were great lengths of track or main line where trains could not be operated except under slow orders. The equipment was broken down and there was a great deal of legitimate and proper complaint from the customers of the road as to the service given. As you all know, during this trusteeship the road has been completely rehabilitated, and today is doing a splendid job as one of the main transcontinental lines of [fol. 1463] this country. If this had not been done there would have been a serious shortage in transportation available for the war effort from the Pacific Coast to the Eastern Coast, which would have seriously interfered with the war effort.

This is the fourth time this road has been in receivership, the second time since I have been on the bench. The last proceeding was an equity proceeding before Section 77 was enacted, and the plan drawn by the securityholders, which came out of that proceeding, proved entirely inadequate to the situation, principally, I think, because of the high capitalization that the plan provided for, and, secondly, because between that receivership and this one the road was not properly managed, the interest of the public was not considered, and the road was not properly maintained.

The road now goes back to the owners in the same condition it did then—splendid condition, good roadbed, good equipment, and with a personnel and organization and working force that is second to none in this country in their loyalty to the property, and their desire to serve the public, and I may express the hope that splendid spirit which now prevails in this organization will not be destroyed by the new management when they take over.

I have often made the observation that in bankruptcy matters those who come into the bankruptcy court as creditors do not realize that they must take a loss on their securities, whatever they may be. This railroad could not come into this court under bankruptcy had it not been that the creditors had already sustained a loss which they must [fol. 1464] take and which must be reflected in any sound plan of reorganization. There seems to be a belief among people that the bankruptcy court by some legerdemain or magic can restore values when they do not exist and restore values that have been wiped out by mismanagement. Creditors must assume their loss and blame themselves for a poor investment, and not blame it upon the court.

The Supreme Court has clearly indicated our duty in two recent cases, i. e., the Western Pacific and the Milwaukee, and given a clear interpretation of this act, the constitutionality of which has been upheld by the Supreme Court.

Some of counsel have urged that the Court should overrule and substitute its judgment for that of the ICC in matters which those decisions indicate the Court cannot interfere with, and on which the findings of the Commission are binding upon the Court. It is our duty to do that, and we shall attempt to comply to the best of our ability.

The Court feels that this plan is feasible, and that it meets all the requirements of Section 77 preliminary to

approval of the plan by the Court. Those are that the Court must be and is satisfied that it complies with the provisions of subsection (b) of Section 77, that it is fair and equitable, affords due recognition to each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and conforms to the requirements of the law of the land regarding the participation of the various classes of creditors and [fol. 1465] stockholders; that the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of this hearing, and that they are reasonable and within the maximum limits as fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; further, that the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except the allowances provided for in subsection (c), paragraph (12) of this section, which may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same.

So, gentlemen, in conclusion let me say that I overrule all objections and approve this plan. The steps necessary to carry it out as required by the statute may be taken.

* * * * * * *

[fol. 1466] [Stamp:] United States District Court, Denver, Colorado. Filed Jan. 2, 1945. G. Walter Bowman, Clerk

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF COLORADO, SITTING AT DENVER

No. 8669

In the Matter of the DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Debtor

In Proceedings for the Reorganization of a Railroad

Before Honorable J. Foster Symes

Denver, Colorado, November 15, 1944.

APPEARANCES:

Thomas R. Woodrow, Esq., for The Denver and Rio Grande Western Railroad Company.

Morrison Shafroth, Esq., for the Insurance Group.

Erskine R. Myer, Esq., for H. A. Hicks, Jr., Trustee of The Denver and Salt Lake Western Railroad Company.

[fol. 1467] HENRY SWAN, called as a witness, being first duly sworn, testified as follows:

Direct examination.

By Mr. Woodrow:

Q. State your name, please.

A. Henry Swan.

Q. You are one of the Trustees of the Debtor Railroad Company?

A. Yes, sir.

Q. You are familiar in a general way with Schedule 26 which is attached to the Petition now before the Court, are you not, Mr. Swan?

A. Yes, sir.

Q. And the Trustees have approved all of these expenditures which are asked for in the Petition?

A. Yes, sir.

Q. Study has been given as to the ability of the Railroad to take care of the cash required in making these expenditures, I assume; is that true?

A. Yes, sir.

Q. And is it your opinion that the cash resources of the Railroad at the present time, with the probably income obtained in 1945, will enable you to make these expenditures without in any manner avoiding any necessity of taking care of the Trustees' obligations or the Railroad's obligations under the proposed reorganization plan?

A. The resources are ample.

Mr. Woodrow: Do you want to cross-examine?

[fol. 1468] Cross-examination.

By Mr. Shafroth:

Q. Mr. Swan, have you made a comparison of the net earnings of the years 1933 and 1934 with the requirements of the plan for those years?

A. 1943 and 1944?

Q. Yes, I beg your pardon, 1943 and 1944.

A. In each of the years 1943 and 1944 certain charges will accrue under the plan by reason of the earnings of the Railroad for those two years.

Q. Can you tell me what the net earnings for 1943 and 1944 are?

A. I can't give you the net earnings for 1944 yet, but the net earnings for 1943 were about $11,000,000 available for interest.

Q. $11,573,667.94, is that correct?

A. Yes, it shows in the annual report.

Q. Have you an estimate for 1944 of the earnings?

A. I haven't up to December first, but they are large enough for the accruing charges provided for under the plan.

Q. What I am trying to get at, Mr. Swan, is whether or not the expenditures proposed in this budget can be taken care of out of the earnings for the years 1943, 1944, and 1945, which would be available for dividends on the common stock; in other words, whether or not the requirements of the pian can be fully taken care of, including the accumulative preferred dividend, and leave a sufficient surplus out of earnings to take care of this proposed expenditure.

A. This proposed expenditure can be taken care of out of the funds that are available from earnings for 1943 and 1944, plus what we expect to accumulate in 1945, without impairing in any way the accruals under the plan through [fol. 1469] the preferred stock dividends, but not including any dividends on the common stock.

Q. No, of course, not. In other words, as I understand it, the earnings for 1943 and 1944, with a reasonable anticipation, without attempting to estimate the 1945 earnings, but with a reasonable anticipation of some earnings in 1945, will be sufficient to take care of all of the requirements of the plan, and leave sufficient to take care of this budget.

A. That is correct.

Q. Do you suppose it would be too much trouble to get Mr. Thompson to make up a little exhibit making that comparison?

A. I have in my hand a statement which we have prepared in order to reply to a telegram which comes to us from Mr. Gibson, who asked the same question that Colonel Anderson has asked you to ask me. It shows, without reference to the capital fund provided in the plan that for the year 1943 the accruals under the plan will be as follows: First Mortgage, fixed 3%, $1,679,225; Prior Contingent 1%, $559,742; Sinking Fund 1st, $171,703; Income Bonds 4½%, $944,057; Sinking Fund Incomes, $56,941; 5% Preferred Stock, $1,859,810. Now, that is the base accrual of each succeeding year, with one exception. That is as our Equipment Trust charges develop they should be added to that.

Q. The figures you gave are for 1943?

A. That is correct. Precisely the same figures appear for 1944, because we have already paid off obligations due this year. Next year we will have $609,000 Equipment Trust due, and $110,284 interest, so that while this year and last year I did not add this into the charge against the earnings, nevertheless next year we will have to provide for that out of cash, not as a charge against earnings, [fol. 1470] except so far as interest is concerned.

Now, then we have paid under Court Order 534 $2,398,679. The balance that has not been paid but accrued in 1943 is $2,872,799, and the total accruals for 1944, $5,271,478, and the accruals both for 1943 and 1944, $8,144,277. Now, in 1945 the amount of——

Q. Before you get to 1945, are the 1944 earnings running approximately the same as the 1943 earnings, or in excess of them?

A. I haven't the detail in my mind.

Q. Even approximately? You couldn't even give it to me approximately?

A. Well, I can telephone and get it exactly for you, get the earnings. (The following information was supplied by the witness at the close of his testimony: Balance available for interest, dividends, etc., up to September 1, 1944, $8,506,004.)

Now, we have to take into account our cash reserves in figuring not only the accruals but also these contemplated expenditures. Contemplated expenditures for this schedule, as well as contemplated expenditures for uncompleted items of previous schedules, and also for the payment of income taxes covering earnings for the year 1944, payable in 1945, and also for the deferred maintenance for which reserves have been set up. Our cash situation is as follows: Estimated balance January 1, 1945,—now, these figures will appear on this sheet—$5,487,000; Government Securities, $13,500,000; Tax Notes, $3,005,000;——

Q. 500,000 or 5000?

A. 5000. Cash in Deferred Maintenance Fund, which is a special separate earmarked fund, $304,000, or a total cash reserve on January first of $22,296,000. Appropriations and commitments against that fund are as follows: [fol. 1471] Reserve for Deferred Maintenance, $3,304,000; this current improvement program and the carryover from the previous programs, $7,000,000; Income Tax estimated against the earnings for 1944, payable in 1945, $5,000,000; a total of $15,304,000, or a balance available for the charges which have accrued under the plan of $6,992,000. These charges, however, up to December 31 of this year aggregate $8,144,277, so there will be a deficit, without giving any consideration to the earnings of 1945, of $1,152,277.

Q. It is not unreasonable to assume that that deficit will be more than earned in 1945?

A. It is very definite this sum will be obtained from the operations of the property in 1945, without any deficit. Now, you can take this, (presenting paper).

Mr. Shafroth: If you will just file that paper as an exhibit, I think it covers everything, Mr. Swan. I think that is all.

(Discussion off the record.)

Mr. Woodrow: I have no further testimony.

(Argument.)

Mr. Woodrow: I desire to submit an order approving and authorizing the expenditures.

The Court: You may have the order. It will be signed.

[fol. 1472] In United States District Court

Hearing of November 20, 1944

(Clerk's Note:) In open court, on November 20, 1944, Mr. William V. Hodges, on behalf of the Debtor and the Denver and Salt Lake Railroad Company, made the following motion:

"I move the Court to determine or send to a Master for determination and report the amounts due each class of creditors and for which each class is entitled to recognition in the distribution of securities in any plan of reorganization; the allocation of earnings to the various classes of creditors during the period of administration, the necessary credits from earnings, by how much, if any, the debtor's assets are inadequate to pay debtor's obligations as of November 15, 1935, and if debtor's assets are more than adequate to pay the said claims as they existed on that date, what equitable claims have the creditors, or either of them, to such excess of assets, and by what equitable right is the debtor's interest in them forfeited or denied to it.

"Debtor records its claim that the questions of fact and law suggested in this motion are for determination within the jurisdiction of the Court and not within the powers or jurisdiction of the Commission to determine."

[fol. 1473] IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF COLORADO, SITTING AT DENVER

No. 8669

In Proceedings for Reorganization of a Railroad

In the Matter of the DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Debtor

HEARING ON ORDER FOR CONFIRMATION OF PLAN AND MOTION OF WILLIAM V. HODGES

Be It Remembered that on, to wit, the 29th day of November, A. D. 1944, the same being one of the regular juridical days of the May Term, A. D. 1944, of said court, this cause came on for hearing before the Honorable J. Foster Symes, Judge of the District Court of the United States for the Judicial District of Colorado.

APPEARANCES:

Henry McAllister, Esq., for the Trustees of the debtor, The Denver and Rio Grande Western Railroad Company.

William V. Hodges, Esq., of the firm of Hodges, Vidal & Goree, for the debtors The Denver and Rio Grande Railroad Company and the Denver and Salt Lake Railroad Company.

Morrison Shafroth, Esq., of the firm of Grant, Shafroth & Toll, for the Insurance Group Committee.

Milton J. Keegan, Esq., of the firm of Dines, Dines & Holme, for City Bank Farmers Trust Company, as Trustee.

Robert G. Bosworth, Esq., of the firm of Pershing, Bosworth, Dick & Dawson, for the Guaranty Trust Company of New York, as Trustee.

[fol. 1474] Thereupon the following proceedings were had:

The Court: Denver and Rio Grande Western Railroad Company hearing on the order to confirm. Mr. Hodges.

Mr. Hodges: May it please the Court, when this matter came up for hearing on the entry of an order to confirm the plan I made a motion which your Honor set for hearing this morning. The motion is on the record, dictated on the record.

The Court: I thought you had a written piece of paper.

Mr. Hodges: I did, and that was at your suggestion read into the record, and the reporter put it in the record and has furnished copies to the parties. That motion, to refresh your recollection, is a motion to have the Court determine or send to a master for determination for the Court the amounts due each class of creditors and for which each class is entitled to recognition in the distribution of securities in any plan of reorganization; second, the allocation of earnings to the various classes of creditors during the period of administration, the necessary credits from earnings, by how much, if any, the debtor's assets are inadequate to pay debtor's obligations as of November 15, 1935, and if debtor's assets are more than adequate to pay the said claims as they existed on that date, what equitable claims have the creditors, or either of them, to such excess of assets, and by what equitable right is the debtor's interest in them forfeited or denied to it.

Debtor records its claim that the questions of fact and law suggested in this motion are for determination within the jurisdiction of the Court and not within the powers of [fol. 1475] jurisdiction of the Commission to determine.

(Thereupon argument was had on the motion by Mr. Hodges, Mr. Shafroth and Mr. Bosworth.)

The Court: Do you care to be heard?

Mr. Keegan: Do I understand what we are discussing now is limited to the motion? We have here this morning this order that was submitted by Mr. Gibson, confirming the plan, and also I understand from Mr. Shafroth he is submitting another order regarding the petition of the City Bank Farmers Trust Company for construction of the plan. I do have a statement to make on those two proposed orders. I just simply want to state that the City Bank Farmers Trust Company, as Trustee under the General Mortgage, objects to the substance of these orders that have been submitted, the order prepared by Mr. Gibson, confirming the plan, and also the one Mr. Shafroth has, denying the petition of the City Bank Farmers Trust Company. That is all the statement I care to make at this time, your Honor.

Thereupon a recess was taken until one thirty o'clock p.m.

Pursuant to recess the following proceedings were had at one thirty o'clock p.m.:

The Court: Did you finish, Mr. Keegan?

Mr. Keegan: Yes. I think that our position was so thoroughly covered in the arguments and in the hearing on the confirmation of the plan that I see no point in my [fol. 1476] making any additional argument at this time.

The Court: All right.

(Thereupon further argument was had by Mr. Hodges.)

OPINION

The Court (from the bench): Mr. Hodges by his motion wants this proceeding held up pending a hearing to determine what is due each class of creditors and what each is entitled to in the distribution of new securities in any plan of reorganization. When we consider the procedure prescribed by the statute, Section 77, and what proceedings have been had in this case, that is just what has been done. The Commission has valued the property. They have fixed the amount of the claims of the different mortgages, ranked them in order of their priority, and, pursuant to the decisions of the Supreme Court, have allowed interest thereon up to the effective date of the plan. I cannot see anything inequitable in the allowance of interest. I have always felt that a creditor was as much entitled to his interest in reorganization as he is to his principal. When people can buy securities, they are more interested by the rate of interest to be paid than they are in their principal. They contract for both, and we cannot see why they should be deprived of their interest any more than they can have the amount of their principal cut down, which is only done when the value of the property is not sufficient to meet the principal due after all claims are marshalled. This matter is one to which the Commission has devoted a great deal of time, and one with which this Court under the decisions of the Supreme Court has nothing to do.

[fol. 1477] Something has been said about equitable principles. The whole theory of bankruptcy and the whole bankruptcy structure in the Federal courts is based upon equitable principles, and I think they are fully applied in this reorganization act. Everybody has had a right to a hearing. The statute is based upon equitable principles and the right of everybody to be heard.

A plan of reorganization must meet certain requirements, as has been here well said. It grants the Commission and the Court in the course of the proceeding power to change the rights of the parties. All previous rights of the debtor are really wiped out. It creates new securities. The old creditors secure new rights and the same property is back of their new securities as was back of the old securities, so they do not lose anything. But the basic principle that is too often overlooked in these Section 77 cases is that, as emphasized in the Milwaukee and Western Pacific cases, the Commission plan "(4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof." Applying this language to this railroad, it has over a course of years demonstrated it can earn a certain amount, and this proviso requires that those earnings be capitalized in such an amount as the history of the property demonstrates can be earned, and if the previous capitalization was so large, as was the case [fol. 1478] of this railroad, that it cannot earn the fixed interest on the old capital structure, that capital structure must be wiped out and a new one set up which there is some probability that the property can carry.

A great deal has been said about the swollen or large earnings of this property for the last three or four years, but, as I have pointed out several times and the Supreme Court has said in allied cases, wartime earnings are no criterion for capitalization of what a property will earn over a period of years. In other words, just because when these new securities are issued earnings are away up, as they are today, they form no basis for the belief that over the life of these securities such earnings will continue. In fact, the history of this property is such that it is very doubtful in my mind if the new capital structure is not too large and the fixed charges are not too great. Had that been in my sole province to decide, I might have—I don't say I would have—provided for lower fixed charges, which would necessarily cut down the amount of new securities to be issued.

All the questions argued and urged by Mr. Hodges have been answered by the Supreme Court in construing this act since the beginning of its operation. It has been held constitutional by the Supreme Court in several cases and its meaning very clearly stated. The parts the Court and the Commission shall play in the reorganization of property have been clearly delimited by that Court. We must, of course, stay within those rulings. A good deal I have been and am asked to do in rejecting this plan and applying so-called equitable principles runs counter to the decisions [fol. 1479] of the Courts of Appeals, which I must recognize.

So I do not see anything to do but to confirm the plan and deny this motion. Likewise I shall make an order formally denying the petition of the City Bank Farmers Trust Company which I have already discussed in a memorandum on confirmation.

For these reasons the motion of Mr. Hodges will be overruled and exceptions allowed; and the plan formally confirmed.

Is there any discussion about this suggested order? Who has agreed to this?

Mr. Shafroth: That has been submitted to everybody I believe, your Honor, and all of the Trustees, that is, the Reconstruction Finance Corporation, the Insurance Group and the Trustees, and while Mr. Keegan's client has not agreed to the substance of it, I think as to form they have made no objection, and I think the same is true of Mr. Hodges.

Mr. Hodges: We do not object to the form. We object to the substance.

The Court: That being the case, on the statement of counsel that it has been approved by all interested parties, with few exceptions, I will sign this order as submitted.

Mr. Keegan: If the Court please, I understand that the objections and exceptions of the City Bank Farmers Trust Company, as Trustee under the General Mortgage, will be shown in the record to these orders.

The Court: Will you file them?

Mr. Keegan: I would like to now object and state just for the record——

(Here follow 2 photolithographs, side folios 1480, 1481)

Exhibit ___

Witness A

THE DENVER AND RIO GRANDE WESTERN SYSTEM

PROPOSED PLAN OF CONSOLIDATION AND REORGANIZATION AS OF JANUARY 1, 1937

FINANCE DOCKET NO. 11002

Consolidated Balance Sheet - December 31, 1935

Columns	Denver and Rio Grande Western Railroad Co. (1)	Rio Grande Junction Ry.Co. (2)	Denver & Salt Lake Western R.R. Co. (3)	Goshen Valley RR Co. (4)	Denver & Salt Lake Ry.Co. (5)	Inter Company Eliminations (6)	Total All Companies (7)	Pro Forma Balance Sheet (8)
ASSETS								
Investments:								
Investment in Road and Equipment	$210,625,971	$5,228,792	$3,645,460	$503,941	$16,306,104		$236,310,268	$225,408,728
Improvements on Leased Railway Property	403,887				404,571		808,458	808,458
Deposits in Lieu of Mortgaged Property Sold	37,875						37,875	-
Miscellaneous Physical Property	155,032						155,032	155,032
Investments in Affiliated Companies	15,523,611				29,666	$14,936,258	617,019	617,019
Other Investments	34	900			820,925		821,859	821,859
Total Investments	$226,746,410	$5,229,692	$3,645,460	$503,941	$17,561,266	$14,936,258	$238,750,511	$227,811,096
Current Assets:								
Cash	$ 1,153,055	$ 764	$ 571		$ 142,351		$ 1,296,741	$ 1,412,771
Special Deposits	112,296	2,050	61		1,977,725		2,092,132	2,013,977
Loans and Bills Receivable	81,240		3,110,850			3,110,850	81,240	81,240
Traffic and Car Service Balances Receivable	188,416				155,125	11,573	331,968	331,968
Net Balances Receivable from Agents & Cond'rs.	78,935				10,646		89,581	89,581
Miscellaneous Accounts Receivable	1,712,981		145,476		136,739	737,001	1,258,195	1,258,195
Material and Supplies	2,600,882				352,132		2,953,014	2,953,014
Interest and Dividends Receivable					6,411		6,411	6,411
Rents Receivable	33,141	58,333			32,473	90,806	33,141	33,141
Other Current Assets	5,721				369		6,090	6,090
Total Current Assets	$ 5,966,667	$ 61,147	$3,256,958		$ 2,813,971	$ 3,950,230	$ 8,148,513	$ 8,186,388
Deferred Assets:								
Working Fund Advances	$ 8,464				$ 105		$ 8,569	$ 8,569
Other Deferred Assets	161,408				28,038		189,446	189,446
Total Deferred Assets	$ 169,872				$ 28,143		$ 198,015	$ 198,015
Unadjusted Debits:								
Rents and Insurance Premiums Paid in Advance	$ 3,190				$ 8,198		$ 11,388	$ 11,388
Other Unadjusted Debits	10,313,744	$ 50,000			93,786	$ 9,422,364	1,035,166	984,866
Total Unadjusted Debits	$ 10,316,934	$ 50,000			$ 101,984	$ 9,422,364	$ 1,046,554	$ 996,254
Total Assets	$243,199,883	$5,340,839	$6,902,418	$503,941	$20,505,364	$28,308,852	$248,143,593	$237,191,753
LIABILITIES								
Capital Liabilities:								
Stock:								
Capital Stock:								
Common	$ 62,457,540	$2,000,000	$3,631,000	$ 50,000	$ 5,393,082	$11,074,082	$ 62,457,540	$ 200,000
Preferred	16,445,600						16,445,600	33,621,940
Funded Debt Unmatured	120,541,000	2,906,000			13,500,000	2,172,000	134,775,000	83,954,849
Grants in Aid of Construction	800,313						800,313	800,313
Nonnegotiable Debt to Affiliated Companies		278,951	14,460	453,941		747,352		
Total Capital Liabilities	$200,244,453	$5,184,951	$3,645,460	$503,941	$18,893,082	$13,993,434	$214,478,453	$118,577,122
Current Liabilities:								
Loans and Bills Payable	$ 6,964,589		$3,110,850			$ 3,110,850	$ 6,964,589	$ 35,000
Traffic and Car Service Balances Payable	501,801				$ 25,838	11,573	516,066	516,066
Audited Accounts and Wages Payable	6,876,763	$ 50,000	73,850		199,188	5,753,852	1,445,949	1,395,646
Miscellaneous Accounts Payable	16,946				23,345		40,291	40,292
Interest Matured Unpaid	7,294,005	52,050	61,690		101,725		7,509,470	380,495
Funded Debt Matured Unpaid	2,003,000						2,003,000	3,000
Unmatured Interest Accrued	1,220,813	8,333	10,568		$660,000	22,258	1,827,456	49,559

Exhibit 25 1066A

Witness Am. Hyer

ompany tions	Total All Companies	Pro Forma Balance Sheet	
	(7)	(8)	
	$236,310,268	$225,408,728	
	808,458	808,458	
	37,875	-	
	155,032	155,032	
56,258	617,019	617,019	
	821,859	821,859	
56,258	$238,750,511	$227,811,096	
	$ 1,296,741	$ 1,412,771	
	2,092,132	2,013,977	
10,850	81,240	81,240	
11,573	331,968	331,968	
	89,581	89,581	
37,001	1,258,195	1,258,195	
	2,953,014	2,953,014	
	6,411	6,411	
90,806	33,141	33,141	
	6,090	6,090	
50,230	$ 8,148,513	$ 8,186,388	
	$ 8,569	$ 8,569	
	189,446	189,446	
	$ 198,015	$ 198,015	
	$ 11,388	$ 11,388	
22,364	1,035,166	984,866	
22,364	$ 1,046,554	$ 996,254	
08,852	$248,143,593	$237,191,753	
74,082	$ 62,457,540	$ 200,000	
	16,445,600	33,621,940	
72,000	134,775,000	83,954,849	
	800,313	800,313	
47,352			
93,434	$214,478,453	$118,577,122	
10,850	$ 6,964,589	$ 35,000	
11,573	516,066	516,066	
53,852	1,445,949	1,395,648	
	40,291	40,292	
	7,509,470	380,495	

Loans and Bills Receivable	81,240		3,110,850			3,110,850	81,240	6
Traffic and Car Service Balances Receivable	188,416				155,125	11,573	331,968	33
Net Balances Receivable from Agents & Cond'rs.	78,935				10,646		89,581	8
Miscellaneous Accounts Receivable	1,712,981		145,476		136,739	737,001	1,258,195	1,25
Material and Supplies	2,600,882				352,132		2,953,014	2,95
Interest and Dividends Receivable					6,411		6,411	
Rents Receivable	33,141	58,333			32,473	90,806	33,141	3
Other Current Assets	5,721				369		6,090	
Total Current Assets	$ 5,966,667	$ 61,147	$3,256,958		$ 2,813,971	$ 3,950,230	$ 8,148,513	$ 8,18
Deferred Assets:								
Working Fund Advances	$ 8,464				$ 105		$ 8,569	$
Other Deferred Assets	161,408				28,038		189,446	18
Total Deferred Assets	$ 169,872				$ 28,143		$ 198,015	$ 19
Unadjusted Debits:								
Rents and Insurance Premiums Paid in Advance	$ 3,190				$ 8,198		$ 11,388	$ 1
Other Unadjusted Debits	10,313,744	$ 50,000			93,786	$ 9,422,364	1,035,166	98
Total Unadjusted Debits	$ 10,316,934	$ 50,000			$ 101,984	$ 9,422,364	$ 1,046,554	$ 99
Total Assets	$243,199,883	$5,340,839	$6,902,418	$503,941	$20,505,364	$28,308,852	$248,143,593	$237,19
LIABILITIES								
Capital Liabilities:								
Stock:								
Capital Stock:								
Common	$ 62,457,540	$2,000,000	$3,631,000	$ 50,000	$ 5,393,082	$11,074,082	$ 62,457,540	$ 20
Preferred	16,445,600						16,445,600	33,62
Funded Debt Unmatured	120,541,000	2,906,000			13,500,000	2,172,000	134,775,000	83,95
Grants in Aid of Construction	800,313						800,313	80
Nonnegotiable Debt to Affiliated Companies		278,951	14,460	453,941		747,352		
Total Capital Liabilities	$200,244,453	$5,184,951	$3,645,460	$503,941	$18,893,082	$13,993,434	$214,478,453	$118,57
Current Liabilities:								
Loans and Bills Payable	$ 6,964,589		$3,110,850			$ 3,110,850	$ 6,964,589	$ 3
Traffic and Car Service Balances Payable	501,801				$ 25,838	11,573	516,066	51
Audited Accounts and Wages Payable	6,876,763	$ 50,000	73,850		199,188	5,753,852	1,445,949	1,39
Miscellaneous Accounts Payable	16,946				23,345		40,291	4
Interest Matured Unpaid	7,294,005	52,050	61,690		101,725		7,509,470	38
Funded Debt Matured Unpaid	2,003,000						2,003,000	
Unmatured Interest Accrued	1,220,813	8,333	10,568		*660,000	72,258	1,827,456	4
Unmatured Rents Accrued	93,912					40,806	53,106	5
Other Current Liabilities	19,073				3,475		22,548	
Total Current Liabilities	$ 24,990,902	$ 110,383	$3,256,958		$ 1,013,571	$ 8,989,339	$ 20,382,475	$ 2,49
Deferred Liabilities:								
Other Deferred Liabilities	$ 369,572	$ 315			$ 13,638		$ 383,525	$ 38
Total Deferred Liabilities	$ 369,572	$ 315			$ 13,638		$ 383,525	$ 38
Unadjusted Credits:								
Tax Liability	$ 1,106,788				$ 177,326		$ 1,284,114	$ 1,28
Accrued Depreciation-Equipment	10,101,423				800,117		10,901,540	
Other Unadjusted Credits	4,436,931				46,240	$ 4,383,255	99,916	9
Total Unadjusted Credits	$ 15,645,142				$ 1,023,683	$ 4,383,255	$ 12,285,570	$ 1,38
Corporate Surplus:								
Additions to Property through Income & Surplus	$ 420,553	$ 3,592			$ 28,878		$ 453,023	$
Profit and Loss-Balance	1,529,261	41,598			D 467,488	$ 942,824	160,547	114,35
Total Corporate Surplus	$ 1,949,814	$ 45,190			$ D 438,610	$ 942,824	$ 613,570	$114,35
Total Liabilities	$243,199,883	$5,340,839	$6,902,418	$503,941	$20,505,364	$28,308,852	$248,143,593	$237,19

NOTE: D - Deficit

September 25, 1936.

*The D.& R.G.W. R.R. Co. proportion-Contra taken to book April 1, 1936 - $75,960

	2,072,424	2,013,977	
10,850	81,240	61,240	
11,573	331,968	331,968	
	89,581	89,581	
37,001	1,258,195	1,258,195	
	2,953,014	2,953,014	
	6,411	6,411	
90,806	33,141	33,141	
	6,090	6,090	
50,230	$ 8,148,513	$ 8,186,388	
	$ 8,569	$ 8,569	
	189,446	189,446	
	$ 198,015	$ 198,015	
	$ 11,388	$ 11,388	
22,364	1,035,166	984,866	
22,364	$ 1,046,554	$ 996,254	
08,852	$248,143,593	$237,191,753	
74,082	$ 62,457,540	$ 200,000	
	16,445,600	33,621,940	
72,000	134,775,000	83,954,849	
	800,313	800,313	
47,352			
93,434	$214,478,453	$118,577,122	
10,850	$ 6,964,589	$ 35,000	
11,573	516,066	516,066	
53,852	1,445,949	1,395,648	
	40,291	40,292	
	7,509,470	380,495	
	2,003,000	3,000	
72,258	1,827,456	49,559	
40,806	53,106	53,106	
	22,548	22,548	
89,339	$ 20,382,475	$ 2,495,714	
	$ 383,525	$ 383,525	
	$ 383,525	$ 383,525	
	$ 1,284,114	$ 1,284,114	
	10,901,540	-	
83,255	99,916	99,916	
83,255	$ 12,285,570	$ 1,384,030	
	$ 453,023	$ -	
42,824	160,547	114,351,362	
42,824	$ 613,570	$114,351,362	
08,852	$248,143,593	$237,191,753	

The Denver and Rio Grande Western Railroad Company											
Accounts Receivable:											
Rio Grande Southern Railroad Company-Contra Account				$459,068							
The Denver and Salt Lake Railway Company				986							
Denver and Salt Lake Western Railroad Company				75,218							
The Denver and Rio Grande Western Railroad Company											
Other Unadjusted Debits:											
Deferred Payments-Bond Coupons-Contra Account						$5,328,985					
Refunding & Improvement Mortgage - Sinking Fund Contra Account						165,192					
The Denver and Rio Grande Western Railroad Company, Wilson McCarthy and Henry Swan, Trustees, Contra Account						2,737,867					
General Mortgage Sinking Fund-Contra Account						1,192,320					
The Denver and Rio Grande Western Railroad Company											
Traffic and Car Service Balances Receivable:											
The Denver and Salt Lake Railway Company			$ 2,025								
The Denver and Salt Lake Railway Company											
Traffic and Car Service Balances Receivable:											
The Denver and Rio Grande Western Railroad Company			9,548								
The Denver and Salt Lake Railway Company											
Miscellaneous Accounts Receivable:											
The Denver and Rio Grande Western Railroad Company				64,275							
The Denver and Salt Lake Railway Company											
Rents Receivable:											
The Denver and Rio Grande Western Railroad Company					$32,473						
The Denver and Salt Lake Western Railroad Company											
Loans and Bills Receivable:											$3,1
The Denver and Rio Grande Western Railroad Company		$3,110,850									
The Denver and Salt Lake Western Railroad Company											
Miscellaneous Accounts Receivable:											
The Denver and Rio Grande Western Railroad Company				145,476							
Rio Grande Junction Railway Company											
Rents Receivable:											
The Denver and Rio Grande Western Railroad Company					58,333						
Total Eliminations - Column 6	$14,936,258	$3,110,850	$11,573	$787,001	$90,806	$9,422,364		$11,074,082	$2,172,000	$747,552	$3,

A - Amounts Added

September 26, 1936.

THE DENVER AND RIO GRANDE WESTERN SYSTEM
PROPOSED PLAN OF CONSOLIDATION AND REORGANIZATION AS OF JANUARY 1, 1937
FINANCE DOCKET NO. 11002

Inter-Company Items Eliminated from Consolidated Balance Sheet (Column 6)

	Amounts Eliminated From Asset Accounts						Amounts Eliminated				
	Investments in Affiliated Companies	Loans and Bills Receivable	Traffic and Car Service Balances Receivable	Miscellaneous Accounts Receivable	Rents Receivable	Other Unadjusted Debits	Capital Stock: Preferred	Capital Stock: Common	Funded Debt	Nonnegotiable Debt to Affiliated Companies	Loans and Bill Payable
The Denver and Rio Grande Western Railroad Company											
Investments in Affiliated Companies:											
Rio Grande Junction Railway Company											
Stock	$ 720,990										
Bonds	906,000							$2,000,000			
Advances	278,951								$ 906,000		
Denver and Salt Lake Railway Company										$278,951	
Stock	7,838,356										
Bonds	1,042,560							5,323,082			
Denver and Salt Lake Western Railroad Company									1,256,000		
Stock	5,631,000										
Advances	14,460							5,631,000			
Goshen Valley Railroad Company										14,460	
Stock	488,861										
Advances	15,080							80,000		438,861	
										15,080	
The Denver and Rio Grande Western Railroad Company											
Accounts Receivable:											
Rio Grande Southern Railroad Company-Contra Account				$459,068							
The Denver and Salt Lake Railway Company				966							
Denver and Salt Lake Western Railroad Company				75,218							
The Denver and Rio Grande Western Railroad Company											
Other Unadjusted Debits:											
Deferred Payments-Bond Coupons-Contra Account						$5,322,985					
Refunding & Improvement Mortgage - Sinking Fund Contra Account						165,192					
The Denver and Rio Grande Western Railroad Company, Wilson McCarthy and Henry Swan, Trustees, Contra Account						2,737,867					
General Mortgage Sinking Fund-Contra Account						1,192,320					
The Denver and Rio Grande Western Railroad Company											
Traffic and Car Service Balances Receivable:											
The Denver and Salt Lake Railway Company			$ 2,025								
The Denver and Salt Lake Railway Company											
Traffic and Car Service Balances Receivable:											
The Denver and Rio Grande Western Railroad Company			9,548								
The Denver and Salt Lake Railway Company											
Miscellaneous Accounts Receivable:											
The Denver and Rio Grande Western Railroad Company				64,273							
The Denver and Salt Lake Railway Company											
Rents Receivable:											
The Denver and Rio Grande Western Railroad Company					$32,473						
The Denver and Salt Lake Western Railroad Company											
Loans and Bills Receivable:											
The Denver and Rio Grande Western Railroad Company		$3,110,850									$3,110,8
The Denver and Salt Lake Western Railroad Company											
Miscellaneous Accounts Payable											

Exhibit 23a

Witness Hamilton

[illegible] 1, 1937

[illegible] (Column 6)

Amount Eliminated from Liability Accounts

[illegible]ded Debt	Nonnegotiable Debt to Affiliated Companies	Loans and Bills Payable	Traffic and Car Service Balances Payable	Audited Accounts and Wages Payable	Unmatured Interest Accrued	Unmatured Rents Accrued	Other Unadjusted Credits-Contra	Profit and Loss
								A $1,279,010
906,000	$278,951							
								2,445,274
1,266,000								A 223,440
	14,460							
	438,861							
	15,080							
							$ 453,068	
				$ 966				
				73,218				
				5,328,985				
				163,192				
							2,737,867	
							1,192,320	
			$ 2,025					
			9,548					
				64,273				
						$ 32,473		
		$3,110,880						

				$ 966				
				73,218				
				5,328,985				
				163,192				
							2,737,867	
							1,192,320	
			$ 2,025					
			9,548					
				64,273				
						$ 32,475		
		$3,110,850						
				73,218	$72,258			
				50,000		8,533		
2,172,000	$747,352	$3,110,850	$11,573	$5,703,852	$72,258	$40,906	$4,[illegible]3,255	$94[illegible],824

[fol. 1482] EXHIBIT 27

Witness Wm. Wyer

The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937, Finance Docket No. 11002

Capitalizable Assets December 31, 1935

The Denver and Rio Grande Western Railroad Company
The Rio Grande Junction Railway Company

In Finance Docket 9754 (189 ICC 665) the ICC authorized the issuance of D&RGW bonds based on additions and betterments made on the properties of the D&RGW and RGJct. Rwy. prior to December 31, 1931, as of which date the Investment in Road and Equipment of these two companies, was		
D&RGW	$212,187,494	
RGJct	5,192,279	
		$217,379,773
Of the expenditures prior to 1932 the following were not included in Form A submitted at that time.		
D&RG	$ 5,677,149	
RGJct	3,955	
		5,681,104
		$211,698,669
Of the expenditures prior to December 31, 1931 the ICC did not allow as properly capitalizable expenditures (See Report FD 9751-1. 189 I. C. C. 665)		
D&RG	$ 72,952	
RGJct	11,243	
		84,195
		$211,614,470

Goshen Valley Railroad Company

In Finance Docket 6205-1 the ICC approved acquisition of Goshen Valley stock (124 ICC 397). The purchase price was set forth as $488,861.12 representing the cost of construction and of the right of way.. This was the value assigned to this stock on the D&RGW balance sheet.	488,861
	$212,103,331

The Denver and Salt Lake Western Railroad Company

In Finance Docket 9720 (189 ICC 181) the ICC approved issuance of $3,850,000 of stock for estimated cost of construction of the line of which there was spent	3,631,000
	$215,734,331

[fol. 1483] *The Denver and Salt Lake Railway Company*

In Finance Docket 8070 (170 ICC 4 and 175 ICC 542) there was submitted a balance sheet of the D&SL Rwy. as of October 31, 1929 showing		
Investment in Road and Equipment	$ 16,515,634	
Improvements on Leased Railway Property	32,540	
In this Docket the ICC authorized acquisition of the D&SL stock at $155 per share or for the 50,000 shares outstanding		$7,750,000
As of October 31, 1929 the D&SL Rwy. also had outstanding Long Term Debt of		13,500,000
A total capitalizable value of		$ 21,250,000
Total all companies, excluding amounts represented by Forms A herewith		$236,984,331

[fol. 1464] Forms A Herewith

D&RGW		
Road and Equipment 1-1-1932 to 12-31-35	$1,283,660	Cr
do prior to 1932	5,677,149	
	$ 4,393,489	
Improvements on Moffat Tunnel Improvement District November 1, 1934 to December 31, 1935	399,423	
Improvements on D&SLW January 1 to December 31, 1935	14,460	
D&SL Rwy.		
Road and Equipment July 1, 1933 to December 31, 1935	802,980	Cr
Improvements on Leased Railway Property July 1, 1933 to December 31, 1935	253,903	
RGJct		
Road and Equipment 1-1-32 to 12-31-35	33,632	
do prior to 1932	3,955	
Goshen Valley		
Road and Equipment 5-1-28 to 12-31-35	15,080	
Total Forms A	$ 4,310,962	

Grand Total Capitalizable Investment as of December 31, 1935 $241,295,293

October 17, 1936

[fol. 1485] EXHIBIT 28

Witness Wm. Wyer

The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937

Finance Docket No. 11002

Description of Obligations and Their Security

October 15, 1936.

[fol. 1486] The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization, as of January 1, 1937

Finance Docket No. 11002

Description of Obligations and Their Security

The Denver and Rio Grande Western Railroad Company

1. Equipment Trust, Series A, dated March 1, 1923, Supplemental Lease, dated July 1, 1924.

Trustee: The Pennsylvania Company for Insurances on Lives and Granting Annuities, Philadelphia, Pa.

Principal amount of certificates authorized by indenture: $4,500,000.

Amount outstanding in hands of public, December 31, 1936: $600,000.

Maturity: $300,000 annually, March 1, 1937 and 1938.

Interest rate: 5½%.

I. C. C. Authorization: F. D. 2872, 69 ICC 182.

Security, as of December 31, 1935: 50 locomotives, 1594 freight train cars, 45 work equipment.

Cost of original equipment: $6,133,857.

2. Equipment Trust, Series B, dated March 1, 1926.

Trustee: The Pennsylvania Company for Insurances on Lives and Granting Annuities, Philadelphia, Pa.

Principal amount of certificates authorized by indenture: $1,725,000.

Amount outstanding in hands of public, December 31, 1936: $575,000.

Maturity: $115,000 annually, March 1, 1937 to March 1, 1941.

Interest rate: 5%.

I. C. C. Authorization: F. D. 5418, 105 ICC 785.

Security, as of December 31, 1935: 10 locomotives, 200 automobile cars, 500 steel gondola cars.

Cost of original equipment: $2,314,473.

3. Equipment Trust, Series C, dated May 1, 1927.

Trustee: The Pennsylvania Company for Insurances on Lives and Granting Annuities, Philadelphia, Pa.

[fol. 1487] Principal amount of certificates authorized by indenture: $1,575,000.

Amount outstanding in hands of public, December 31, 1936: $630,000.

Maturity: $105,000 annually, May 1, 1937, to May 1, 1942.

Interest rate: 4½%.

I. C. C. Authorization, F. D. 6227, 124 ICC 383.

Security, as of December 31, 1935: 10 locomotives, 4 dining cars, 300 automobile cars.

Cost of original equipment: $2,114,569.

4. The Rio Grande Western Railway Company First Trust Mortgage, dated July 1, 1889.

Supplemental indentures as follows: March 24, 1899; January 28, 1902; December 20, 1924; April 1, 1925; March 29, 1932.

Trustee: Central Hanover Bank & Trust Company, New York, N. Y.

Principal amount of bonds authorized by indenture	$16,000,000
Amount issued, December 31, 1935:	
Outstanding in hands of public	15,190,000
Pledged with Reconstruction Finance Corporation	10,000
	$15,200,000

Date of maturity: July 1, 1939.

Interest rate: 4%.

I. C. C. Authorization:

$15,190,000 outstanding: issuance not authorized. Liability assumed by D&RGW pursuant to F. D. 3169, 82 ICC 745.

10,000 pledged: Issuance and assumption by D&RGW authorized in F. D. 9323, 184 ICC 425. Pledge authorized in F. D. 9181, 180 ICC 777.

Present security: A first lien on approximately 415 miles of railroad, 314 miles of which constitutes the main line of the D&RGW from Crevasse (near Colorado-Utah state line) to Ogden, Utah. Also a first lien on a small amount of equipment as set forth in separate exhibit.

5. The Denver and Rio Grande Railroad Company First Consolidated Mortgage, dated July 15, 1886.

Supplemental indentures as follows: March 27, 1890; April 14, 1890; January 26, 1891; May 20, 1891; September 11, 1891; January 30, 1894; June 9, 1916; December 20, 1924; April 1, 1925; March 29, 1932.

Trustee: United States Trust Company, New York, N. Y.

Principal amount of bonds authorized by indenture: $42,000,000.

Amount issued, as of December 31, 1935:

Outstanding in hands of public	4%	$34,125,000	
	4½%	6,382,000	$40,507,000
Pledged with:			
Reconstruction Finance Corporation	4%	783,000	
The Railroad Credit Corporation	4%	662,000	1,445,000
			41,952,000

[fol. 1488] Date of maturity: January 1, 1936.

I. C. C. Authorization:

$40,507,000 outstanding: Issuance not authorized. Liability assumed by D&RGW pursuant to F. D. 3169, 82 ICC 745.

783,000 pledged with RFC: Issuance and assumption by D&RGW authorized in F. D. 9323, 184 ICC 425. Pledge authorized in F. D. 9181, 180 ICC 777.

662,000 pledged with RCC: Issuance and assumption by D&RGW and pledge authorized in F. D. 9323, 184 ICC 425.

Present security: A first lien on approximately 875 miles of standard gauge and 683 miles of narrow gauge railroad (counting three-rail line from Hooper to Antonito as narrow gauge), practically all of which is in Colorado. Prin-

cipal line, Denver via Pueblo to Rifle, 386 miles. Also a first lien on certain equipment, as set forth in separate exhibit.

6. The Rio Grande Western Railway Company First Consolidated Mortgage, dated April 1, 1899.

Supplemental indentures as follows: June 1, 1899; October 10, 1899 (3); January 19, 1900; January 29, 1900; January 30, 1900; March 19, 1901; April 13, 1901; May 23, 1901; July 20, 1908 (6); January 21, 1910 (2); February 13, 1929; December 20, 1924; April 1, 1925; March 29, 1932.

Trustee: Guaranty Trust Company of New York, N. Y.

Principal amount of bonds authorized by indenture: $28,200,000, plus $20,000 per mile of road constructed.

Amount issued as of December 31, 1935:

Outstanding in hands of public	$15,080,000	
Pledged with Reconstruction Finance Corporation	1,395,000	$16,475,000

Date of maturity: April 1, 1949.

Interest rate: 4%.

I. C. C. Authorization:

$15,080,000 outstanding: Issuance not authorized. Liability assumed by D&RGW pursuant to F. D. 3169, 84 ICC 745.

1,395,000 pledged: Issuance and assumption by D&RGW authorized in F. D. 9323, 184 ICC 425. Pledge authorized in F. D. 9181, 180 ICC 777.

Present security: A first lien on approximately 283 miles of standard gauge branch line railroad in Utah; on the entire capital stock of the Utah Fuel Company; and on certain equipment, as set forth in separate exhibit.

A second lien upon the property formerly owned by the Rio Grande Western Railway Company, subject only to its First Trust Mortgage.

[fol. 1489] 7. D&RGW Refunding and Improvement Mortgage, dated February 1, 1924.

Supplemental indentures as follows:

December 20, 1924

February 13, 1929.

January 29, 1930

Trustee: Chase National Bank of the City of New York.

Principal amount of bonds authorized by indenture: $150,000,000

Amount issued as of December 31, 1935:

Series A, 6% Bonds, due October 1, 1974, outstanding $2,000,000 ($1,000,000 owned by the Missouri Pacific Railroad Company and Western Pacific Railroad Corporation each.)

Series B, 5% Bonds, due April 1, 1978:

Outstanding in hands of public	$12,000,000	$14,000,000
Pledged with—Reconstruction Finance Corporation	4,385,000	
The Chase National Bank	6,096,000	10,481,000
Total Series B	22,481,000	
Total Both Series		$24,481,000

I.C.C. Authorization:

Series A: F.D. 3169, 90 ICC 141; F.D. 4377, 94 ICC 71.

Series B: F.D. 6806, 138, ICC 621; F.D. 7901, 158 ICC 301; F.D. 8271, 162 ICC 748; F.D. 9754, 189 ICC 665; F.D. 9181, 180 ICC 777.

Present security: A first lien on approximately 85 miles of standard gauge and 34 miles of narrow gauge branch lines in Colorado and Utah. Also a lien generally on all the lines of railroad and equipment owned by the D&RGW, subject only to prior liens, and a collateral lien on the Rio Grande Junction Railway, subject to its First Mortgage.

The following securities are pledged under the mortgage:

Terminal Companies:

*$4,800 par value capital stock of Denver Union Terminal Company (⅛ of total issue.)

8,000 par value capital stock of Pueblo Union Depot and Railroad Co. (of total of $40,600 issued.)

99,500 par value Salt Lake City Union Depot and Railroad Company (½ of total issue.)

(Directors' qualifying shares of above companies, owned by D&RGW, are not pledged. Are included in showing per cent of total issue owned by D&RGW.)

[fol. 1490] Rio Grande Junction Railway Company:

$1,999,300 par value capital stock. (D&RGW owns total issue of 20,000 shares, including seven directors' qualifying shares unpledged.)

*Subject to prior pledge under stock trust agreement.

906,000 principal amount Refunding Bonds. (Total amount issued under mortgage.)

Miscellaneous:

$8,335,000 principal amount DRG Improvement Mortgage Bonds due June 1, 1928, held as muniment of title. Bonds paid at maturity (except $2,000. for which cash is deposited) but mortgage not released of record.

8. Reconstruction Finance Corporation Notes:—

For general corporate purposes—6%:

Date	Amount	Maturity	I.C.C. Authorization
March 29, 1932	$250,000	March 29, 1935	F.D. 9181, 180 ICC 777
June 27, 1932	750,000	March 29, 1935	F.D. 9181, 180 ICC 777
July 29, 1932	1,000,000	March 29, 1935	F.D. 9181, 180 ICC 777
April 25, 1933	1,000,000	Demand	
June 30, 1933	950,000	Demand	(F. D. 9777, 189 ICC 674) 193 ICC 209
	$3,950,000		

For construction of D&SLW (Cutoff)—5%

January 12, 1933	$ 105,500	January 12, 1936 F. D. 9562, 187 ICC 399
February 2, 1933	91,800	February 2, 1936
February 25, 1933	81,500	February 25, 1936
March 22, 1933	88,800	March 22, 1936
April 20, 1933	219,700	April 20, 1936
May 20, 1933	297,800	May 20, 1936
June 26, 1933	231,900	June 26, 1936
July 20, 1933	197,600	July 20, 1936
August 22, 1933	281,800	August 22, 1936
September 22, 1933	472,000	September 22, 1936
October 20, 1933	357,700	October 20, 1936
November 20, 1933	201,600	November 20, 1936
December 21, 1933	189,800	December 21, 1936
January 16, 1934	163,500	January 16, 1937
February 21, 1934	91,200	February 21, 1937
March 21, 1934	85,800	March 21, 1937
April 30, 1934	115,300	April 30, 1937
June 11, 1934	165,700	June 11, 1937
June 26, 1934	99,000	June 26, 1937
August 6, 1934	57,500	August 6, 1937
August 31, 1934	46,500	August 31, 1937
	$3,631,000	

[fol. 1491] For acquisition of D&SL capital stock—5%: December 19, 1934 $3,182,150 Demand F. D. 10634, 202 ICC 489

Less credit of	71,300
	3,110,850
Total Debt	$10,691,850

Notes are secured by following collateral:

Description	Par Value
D&RGW Bonds:	
D&RG First Consolidated 4% Bonds	$ 783,000
RGW First Trust 4% Bonds	10,000
RGW First Consolidated 4% Bonds	1,395,000
D&RGW Refunding and Improvement 5% Bonds	4,385,000
Cutoff Securities:	
D&SL Income 6% Bonds (Total Issue, $11,000,000)	1,266,000
D&SL Capital Stock, no par (49,540 shares out of total issue of 50,000) cost to D&RGW	7,838,355
D&SLW Capital stock (total issue)	3,631,000
Motorway Stocks:	
Denver—Colorado Springs—Pueblo Motor Way, Inc., capital stock (½ of total issue) (par value $1, per sh)	42,000
Rio Grande Motor Way, Inc., capital stock (80% of entire issue) (par value $100. per share)	130,000
Miscellaneous:	
Goshen Valley Railroad Stock (500 shares, entire issue)	50,000
Rio Grande Southern Railroad Company First Mortgage 4% Bonds (in default since 1922)	1,777,000

Second lien on securities pledged with:

(a) The Railroad Credit Corporation

(b) The Chase National Bank for loans.

9. The Railroad Credit Corporation Note:

Note for $500,000, dated June 1, 1932, payable on demand or March 31, 1934

Interest rate: 1-½%, adjusted quarterly to rediscount rate of Federal Reserve Bank, New York.

Secured by:

(a) $662,000 principal amount, D&RG First Consolidated 4% Bonds;

(b) D&RGW's share in Marshalling and Distributing Fund;

(c) Second lien on securities pledged with Reconstruction Finance Corporation.

[fol. 1492] 10. Bank Debt:

Note for $1,500,000, dated April 30, 1935, payable on demand to The Chase National Bank of the City of New York.

Interest rate: 5%.

Secured by $6,096,000 principal amount, D&RGW Refunding and Improvement Mortgage 5% Bonds.

11. D&RGW General Mortgage, dated February 1, 1924.

Trustee: City Bank Farmers Trust Company, New York.

Principal amount of bonds authorized and outstanding, December 31, 1935: $29,808,000.

Date of maturity: August 1, 1955.

Interest rate: 5%.

Sinking fund: 1% of maximum principal amount of bonds at any time outstanding, if Net Income sufficient for payment.

I.C.C. Authorization: F.D. 3169, 82 ICC 745; 90 ICC 141.

Security: A lien generally upon the property of the D&RGW securing the Refunding and Improvement Mortgage, but junior thereto.

12. D&RGW Trustees' Certificates.

	Series A	Series B
Principal amount	$1,000,000	$650,000
Date of issue	July 31, 1936	July 31, 1936
Date of maturity	December 31, 1936	April 30, 1937
Rate of interest	1-½%	2%

I.C.C. Authorization: Report and order dated July 23, 1936, F.D. 11271.

Security: Both series equally secured by a first and paramount lien (except and subject to liens for taxes and assessments and the rights of trustees under any equipment trusts in respect of equipment subject thereto) upon the property of the D&RGW, and upon surplus earnings. For further detail, see Court Proceedings, p. 1658.

The Denver and Salt Lake Western Railway Company

13. Reconstruction Finance Corporation Note:

Note for $3,182,150 (later reduced by credit of $71,300 to $3,110,850) dated December 19, 1934, payable to Reconstruction Finance Corporation on demand:

Interest rate: 5%

Secured by note of D&RGW in same amount, payable to bearer, and collaterally secured by 40,140 shares of D&SL capital stock.

The Denver and Salt Lake Railway Company

14. First Mortgage, dated January 1, 1927.

Trustee: Bankers Trust Company of New York.

[fol. 1497] Principal Amount of Bonds Authorized by indenture: $11,000,000.

Amount outstanding in hands of public, December 31, 1936: $1,500,000.

Date of maturity: January 1, 1950.

Rate of interest: 4%.

Present security: First lien on entire property of company, including line of railroad from Utah Junction (Denver) to Craig, Colorado, and lease of Moffat Tunnel.

15. Income Mortgage, dated January 1, 1927.

Trustee: International Trust Company, Denver, Colorado.

Principal amount of bonds authorized by indenture and outstanding in hands of public as of December 31, 1936: $11,000,000. ($1,266,000 owned by D&RGW and pledged with RFC.)

Date of Maturity: January 1, 1960.

Interest provisions: Interest payable only if earned, in multiples of 1%, with maximum rate of 6% per annum. Interest is cumulative to the extent of 75% of the Company's net income in any year.

Present security: A lien on the property of the company subject to the lien of the First Mortgage, but junior thereto.

Rio Grande Junction Railway Company.

16. First Mortgage, dated December 1, 1889.

Trustee: Control Hanover Bank and Trust Company.

Principal amount of bonds authorized and outstanding: $2,000,000.

Date of maturity: December 1, 1939.

Interest rate: 5%.

I. C. C. Authorization: Issuance not authorized. Liability assumed by D&RGW pursuant to F. D. 3169, 82 ICC 745.

Present security: A first lien on the line of railroad extending from Rifle to Grand Junction, Colorado, 62.08 miles.

17. Refunding Mortgage, dated January 1, 1929.

Trustee: The Equitable Trust Company of New York.

Principal amount of bonds authorized: $12,000,000.

Amount issued as of December 31, 1935: $906,000.

(All owned by D&RGW and pledged under its Refunding and Improvement Mortgage.)

Date of maturity: January 1, 1979.

Interest rate: 5%.

I. C. C. Authorization: as to $718,000—F.D. 7570, 158 ICC 314
as to $188,000—F.D. 9754, 189 ICC 665

$906,000

Present security: A lien upon the property of the RGJ, subject only to the lien of the RGJ First Mortgage.

[fols. 1494-1495] EXHIBIT NO. 34

* * * * * * *

WESTERN CONSOLIDATED MORTGAGE. SUBDIVISION IV OF ARTICLE FIRST

IV. —The Railway Company hereby covenants to use the proceeds of the bonds which shall be issued pursuant to subdivisions II and III, or either of them, of this First Article, to pay for the building, purchase or other acquisition or equipping of railroad which shall or may constitute a branch or branches or extension or extensions of the railroad of the Railway Company, or to pay for the acquisition of securities of companies which shall own railroad which shall or may constitute such branch or branches, extension or extensions, or to pay for the development of property of

the Railway Company by providing for its necessities for equipment or other improvements of, or additions to, its property, or to pay for acquisitions lawfully made with a view of increasing its traffic or earnings.

[fol. 1496] EXHIBIT 34J

Witness Wm. Wyer

The Denver and Rio Grande Western Railroad System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937. Finance Docket No. 11002

Copy made September 18, 1936 of original on file with Guaranty Trust Company of New York.

An Agreement, made and entered into this twenty-third day of May, 1901, by and between Spencer Trask & Company, the Rio Grande Western Railway Company and the Morton Trust Company, as Trustee under the consolidated mortgage of said Railway Company, dated April 1, 1899.

Whereas, said Spencer Trask & Company are the owners of the entire capital stock of the Utah Fuel Company and the same has been deposited by them with the Morton Trust Company as Trustee as aforesaid.

Now, Therefore, for valuable consideration, the parties hereto hereby agree to and with each other as follows:

The said stock shall be held by the said Morton Trust Company as such Trustee as security for the payment of the principal and interest of the bonds of the said Rio Grande Western Railway Company secured by said first consolidated mortgage and in all respects subject to the terms and conditions of said Mortgage with reference to the railroad securities pledged thereunder, and upon the further condition that the Western Company shall have the right, at any time, upon paying to the Trustee six million dollars in cash, or upon delivering to the Trustee said first consolidated mortgage bonds to the amount of six million dollars at par, with all accrued coupons attached, to receive the said stock of the Utah Fuel Company free and discharged from the lien of the said mortgage. Subject to the first [fol. 1497] and prior lien thereof, the said stock is hereby transferred and assigned to the said Rio Grande Western Railway Company.

In Witness Whereof, the parties hereto have signed their names and affixed their Seals the day and year first above written.

(Signed) Spencer Trask & Co. The Rio Grande Western Ry. Co., By Wm. J. Palmer, President.
Attest: (Sgd.) Geo. A. Krause, Secretary. (Seal.)

Morton Trust Company (Signed) By J. D. Corbecne, 2d Vice Prest.
Attest (Sgd.) H. M. Francis, Secretary. (Seal.)

[fol. 1498] EXHIBIT 35—WITNESS WM. WYER

The Denver and Rio Grande Western System Proposed Plan of Consolidation as of January 1, 1937

Finance Docket No. 11002

The Western Pacific Railroad Corporation
The Denver and Rio Grande Western Railroad Company
Missouri Pacific Railroad Company
and
James S. Alexander, as Trustee

AGREEMENT

Relating to the Stock of Utah Fuel Company

Dated December 20, 1924

[fol. 1499] Agreement dated the 20th day of December, 1924, between The Western Pacific Railroad Corporation, a Delaware corporation (hereinafter called the Western Pacific), The Denver and Rio Grande Western Railroad Company, a Delaware corporation (hereinafter called the Denver Company), Missouri Pacific Railroad Company, a Missouri corporation (hereinafter called the Missouri Pacific) and James S. Alexander, as Trustee (hereinafter called the Trustee).

The Rio Grande Western Railway Company heretofore executed its First Consolidated Mortgage Deed, dated April 1, 1899, to The State Trust Company, Trustee (hereinafter called the Consolidated Mortgage) and thereafter

executed an Agreement, dated, May 23, 1901, (hereinafter called the Pledge Agreement), with Spencer Trask & Company and Morton Trust Company (the then trustee of the Consolidated Mortgage) pledging to said Trust Company as such trustee, to be held upon the terms in said Agreement set forth, 100,000 shares of the capital stock of Utah Fuel Company, a New Jersey corporation, constituting the entire capital stock of said Company.

On June 20, 1918, all of the right, title and interest of the Denver and Rio Grande Railroad Company (a successor in title to said The Rio Grande Western Railroad Company) in and to said 100,000 shares of the capital stock of Utah Fuel Company was sold under execution and purchased by William Salomon & Company and the right, title and interest of William Salomon & Company in and to said shares of stock was subsequently transferred to the Western Pacific. Thereafter, in a suit pending in the District Court of the United States for the District of Colorado, wherein The Equitable Trust Company of New York, as Trustee, was Intervenor and substituted Plaintiff and The Denver and [fol. 1500] Rio Grande Railroad Company was Defendant (In Equity No. 6782), by decree of said court said sale on execution was confirmed, and, by deed executed by the Special Master appointed in said suit, the Receiver appointed therein, and said The Denver and Rio Grande Railroad Company any right, title, and interest, if any, remaining in said The Denver and Rio Grande Railroad Company or its receiver in or to said stock was assigned and transferred to the Western Pacific. Pursuant to said decree in said suit, any remaining interest in or claim to said stock on the part of said The Denver and Rio Grande Railroad Company, if any, also was sold and thereafter was assigned and transferred by the purchasers thereof to, and became vested in, the Western Pacific.

Thereafter, pursuant to an order made and entered November 20, 1924, by the District Court of the United States for the District of Colorado in a cause therein pending entitled "Bankers Trust Company, as Trustee, Plaintiff against The Denver and Rio Grande Railroad Company and The Denver and Rio Grande Western Railroad Company, Defendants, in Equity, No. 7381, Consolidated Cause", confirming a sale in foreclosure made in said cause pursuant to a final decree duly entered therein, September 18, 1924, Cass E. Herrington, Special Master appointed in

said cause, T. H. Beacom, Receiver, Bankers Trust Company, as Trustee under the First and Refunding Mortgage of the Denver and Rio Grande Railroad Company, and The New York Trust Company, as Trustee under the Adjustment Mortgage of The Denver and Rio Grande Railroad Company, and Donald C. Swatland and Hayward A. Hibberd, the purchasers at said sale, by deed dated as of December 1, 1924, duly assigned and transferred to the Denver Company all title, equity, interests, rights, rights of subrogation and/or marshalling, and claims and demands, if any, of said Bankers Trust Company, as Trustee under said First and Refunding Mortgage, and of said [fol. 1501] The New York Trust Company, as Trustee under said Adjustment Mortgage, in or to or in respect of said stock of Utah Fuel Company, or dividends paid or declared thereon, or in or to or in respect of any cause of action connected therewith. The Denver Company has released to the Western Pacific and to The Guaranty Trust Company of New York, the present Trustee under the Consolidated Mortgage, any right or claim, if any, to any dividend or dividends paid in respect of the Utah Fuel Company stock after June 20, 1918, and prior to the date hereof.

It is provided in the Plan and Agreement dated June 15, 1923, for the Reorganization of the Denver and Rio Grande Western Railroad System, as modified February 29, 1924, (hereinafter called the Reorganization Plan), that the interest of the Western Pacific, and any interest which might thereafter be acquired by the Denver Company in said stock of Utah Fuel Company, subject to the pledge of said stock under the Consolidated Mortgage in accordance with the Pledge Agreement, with any rights of redemption which appertain thereto, shall be transferred to a trustee or trustees upon the terms in the Reorganization Plan provided.

The certificates for said shares of stock of Utah Fuel Company are in the possession of said The Guaranty Trust Company of New York, as Trustee under the Consolidated Mortgage, and are registered in the name of said Trust Company or of its nominees.

The parties, other than the Trustee have knowledge of the terms of the Consolidated Mortgage, the Pledge Agreement and the Reorganization Plan. The Trustee assumes no responsibility for the correctness of any of the foregoing recitals.

Now, therefore, in consideration of the premises and of the sum of one dollar to each of them paid, the Western Pacific and the Denver Company hereby respectively sell, [fol. 1502] assign, transfer and set over to James S. Alexander, as Trustee, all of their right, title and interest in and to said 100,000 shares of the capital stock of Utah Fuel Company, subject, however, to the pledge thereof under the Consolidated Mortgage, together with all rights of redemption of said 100,000 shares of capital stock of Utah Fuel Company arising through the Pledge Agreement.

And it is hereby agreed that the said right, title and interest in and to said stock of Utah Fuel Company and said rights of redemption shall be held by the Trustee, subject to the conditions, upon the limitations, and for the uses and purposes herein set forth.

First: The Western Pacific hereby assigns and transfers to the Missouri Pacific, subject to the Consolidated Mortgage, and to the provisions of this agreement, and the rights of the Trustee hereunder, one-half its right, title and interest in, to or in respect of the Utah Fuel Stock.

The Denver Company hereby assigns and transfers to the Western Pacific and the Missouri Pacific, in equal shares, subject as aforesaid, all its right, title and interest in, to or in respect of the Utah Fuel Stock. The ultimate beneficial interest in said 100,000 shares of the capital stock of Utah Fuel Company (hereinafter called the Utah Fuel Stock) shall be vested one-half in the Missouri Pacific and one-half in the Western Pacific.

Second: The Trustee shall cause all dividends that shall be declared and paid on the Utah Fuel Stock prior to February 1, 1929, to be paid to the Denver Company, and shall execute and deliver, or request Guaranty Trust Company of New York, as trustee under the Consolidated Mortgage, to execute and deliver, all proper dividend orders for that purpose. Any such dividends received by the Trustee prior to said date shall forthwith be paid over to the Denver Company. From and after February 1, 1929, the Trustee [fol. 1503] from time to time, on the written request of the Denver Company, or the Missouri Pacific, or the Western Pacific or the Preferred Stockholders Committee created as provided in the Reorganization Plan (hereinafter called the Preferred Stockholders Committee) accompanied by

the certificate hereinafter provided for, shall execute and deliver, or request Guaranty Trust Company of New York, as trustee as aforesaid, to execute and deliver, dividend orders in favor of the Denver Company so that, so long as any of the Bonds (hereinafter called the General Mortgage Bonds) secured by the General Mortgage of the Denver Company to the Farmers' Loan and Trust Company, Trustee, dated February 1, 1924, (hereinafter called the General Mortgage) or any of the Bonds (hereinafter called the Refunding Bonds) secured by the Refunding and Improvement Mortgage of the Denver Company to The Equitable Trust Company of New York, Trustee, dated February 1, 1924, (hereinafter called the Refunding Mortgage), or any bonds or obligations issued to pay or refund the General Mortgage Bonds or the Refunding Bonds, or any of them, are outstanding, dividends declared on the Utah Fuel Stock shall be paid, as the same are distributed, to the Denver Company; provided, however, that if at any time on or after February 1, 1929, the net income of the Denver Company, together with the dividends paid upon the Utah Fuel Stock, shall have been sufficient, during the preceding period of twelve calendar months, to pay the dividends accruing upon the preferred stock of the Denver Company for said period of twelve calendar months, and all arrears of dividends upon said preferred stock shall have been paid and money provided and appropriated for the payment of the dividends payable thereon during the next succeeding period of twelve calendar months, then so long as the net income of the Denver Company and the dividends upon the Utah Fuel Stock shall be more than sufficient [fol. 1504] to pay the dividends accruing upon the preferred stock of the Denver Company and no arrears of dividends thereon shall exist and so long as moneys shall be available and shall have been appropriated by the Denver Company for the payment of the dividend or dividends upon said preferred stock for a succeeding period of at least twelve calendar months and such dividends shall have been declared, the dividends on the Utah Fuel Stock, so far as the same shall not be required to provide for the payment of dividends upon said preferred stock as aforesaid, shall by the Trustee be directed to be and shall be paid to the Western Pacific and the Missouri Pacific, or their assigns, respectively, in equal shares, notwithstanding any request for the payment of such dividends to the Denver Company.

In case at any time no General Mortgage Bonds or Refunding Bonds or bonds or obligations issued to pay or refund the General Mortgage Bonds or the Refunding Bonds, or any of them, shall be outstanding, the Trustee, if this agreement shall remain in force thereafter, shall, on like request, execute and deliver, or request Guaranty Trust Company of New York, as trustee as aforesaid, to execute and deliver, dividend orders in favor of the Western Pacific and the Missouri Pacific, or their assigns, respectively, in equal shares.

Whenever, on or after February 1, 1929, any such request is made upon the Trustee for, or to procure, dividend orders with respect to dividends upon the Utah Fuel Stock, the corporation or committee making such request shall furnish to the Trustee a certificate signed by the Chairman of the Board, the President or a Vice-President and by the Treasurer or an Assistant Treasurer of the Denver Company setting forth (a) whether any General Mortgage Bonds or Refunding Bonds, or any bonds or obligations issued to pay or refund the General Mortgage Bonds or the Refunding Bonds, or any of them, are outstanding, and, if so, (b) the net income of the Denver Company, and the dividends paid upon the Utah Fuel Stock, during the twelve calendar [fol. 1505] months preceding the date of such certificate; (c) the aggregate par value of the preferred stock of the Denver Company then outstanding, and the aggregate amount of dividends which accrued thereon during the twelve calendar months preceding said date and the aggregate amount of dividends payable thereon during the twelve calendar months next succeeding said date; (d) the arrears of dividends, if any, upon said preferred stock; and (e) the provision and appropriation, if any, for the payment of the dividends upon said preferred stock for the twelve calendar months next succeeding said date, and whether any such dividends have been declared by the Denver Company.

The Trustee shall be entitled to act hereunder in reliance on any such certificate, and on the statements therein contained, and shall incur no liability for any such action.

Third: The Board of Directors of Utah Fuel Company shall consist of six directors and the Missouri Pacific and the Western Pacific shall each have the right to nominate

three of such directors. Any such nomination shall be made in writing and be delivered to the Trustee not less than ten days prior to any meeting of the stockholders of Utah Fuel Company for the election of a director or directors. If any such nomination is made, the Trustee shall cause the Utah Fuel Stock subject hereto to be voted for the election of the persons so nominated as directors. If and to the extent that no such nomination is made, the Trustee may vote the Utah Fuel Stock for the election of such directors as he may determine, but the Trustee shall at any time, at the joint request of the Missouri Pacific and the Western Pacific, vote the Utah Fuel Stock for the removal of any director or directors not nominated by either of said corporations, and for the election of the person or persons speci- [fol. 1506] fied in such request. The Trustee, so far as he may legally do so under its charter and by-laws and the statutes governing its incorporation, shall forthwith cause the by-laws of the Utah Fuel Company to be amended to provide in effect:

(a) that there shall be six members of the Board of Directors;

(b) that special meetings of stockholders may be called at any time by the holders of record of a majority in amount of the outstanding stock or by any director;

(c) that vacancies in the Board may be filled only by vote of the holders of record of two-thirds in amount of the outstanding stock;

(d) that any director not nominated by the Missouri Pacific or the Western Pacific may at any time be removed by vote of the holders of record of a majority in amount of the outstanding stock;

(e) that the members from time to time of the Preferred Stockholders Committee shall be entitled to receive copies of the minutes of meetings of the Board of Directors of Utah Fuel Company and that one member of said Committee, designated by said Committee, shall be privileged to attend all meetings of the Board of Directors of Utah Fuel Company, but without the right to vote thereat, and shall be entitled to receive fees for attending such meetings and/or reimbursement of

his personal expenses in connection therewith to the same extent as directors; and

(f) that the Preferred Stockholders Committee, at any time when as many as four quarterly dividends upon the preferred stock (whether or not consecutive) shall have accrued and be unpaid, may, and at the request in writing of the holders of record of at least [fol. 1507] ten per cent of the then outstanding preferred stock shall, appoint an accountant familiar with railroad affairs, a banker, and a man of experience in practical railroad work, who shall be given full access to the books and accounts of Utah Fuel Company.

Subject to the specific provisions of this agreement, the Trustee shall possess, in respect of the Utah Fuel Stock, and shall be entitled to exercise, all of the powers of absolute owner thereof and all rights of every name and nature in respect thereof, including the right to vote and consent for every purpose; provided, however, that subject to the provisions of this agreement, the Trustee shall at any time vote in such manner or take such other action as may from time to time be directed in writing by the Western Pacific and the Missouri Pacific jointly.

It shall be the policy of Utah Fuel Company, so long as this agreement shall remain in force, that surplus earnings and profits shall not be unreasonably accumulated in the treasury of that Company and, in voting the stock held by him hereunder (which may be done either in person or by proxy) and in acting on matters which may come before any stockholders meeting, the Trustee will endeavor to carry out said policy, and will otherwise exercise his best judgment; but the Trustee assumes no responsibility, except for the exercise of good faith, in respect of carrying out said policy or in respect of the management of said Company or in respect of any action taken by him or in pursuance of any consent by him as such stockholder or pursuant to his vote so cast, and the Trustee shall incur no responsibility by reason of any errors of law or judgment or any matter or thing done or omitted under this agreement, except for his own wilful malfeasance.

[fol. 1508] Fourth: The Trustee may without request, and if the Missouri Pacific or the Western Pacific in writing so request, shall, from time to time, in order to qualify

persons to act as directors of Utah Fuel Company as provided herein, request; The Guaranty Trust Company of New York, as Trustee under the Consolidated Mortgage, to sell to, and/or transfer into the name of, each of the persons nominated to be directors in any such request or, in the absence of such request, selected by the Trustee to be such directors, such number of shares not exceeding ten (10) of the stock of Utah Fuel Company held hereunder as may be so requested or determined; provided, however, that in making any such request upon The Guaranty Trust Company of New York, the Trustee shall request that the certificates for any shares transferred as aforesaid shall be deposited immediately with The Guaranty Trust Company of New York, as such Trustee, endorsed in blank or accompanied by a proper instrument of assignment and transfer in blank, duly executed, together, if any of said shares of stock shall have been sold to any such person or persons selected for directors, with a written agreement in form satisfactory to The Guaranty Trust Company of New York, as such Trustee, giving The Guaranty Trust Company of New York, as such Trustee, the right at any time to repurchase, for the trust estate of the Consolidated Mortgage and subject thereto for the Trustee hereunder, the shares of stock so sold at the original sale price thereof, with such interest, if any, as shall be specified in such agreement.

Fifth: In the event of the foreclosure or enforcement of the Refunding Mortgage, or of the General Mortgage, or of any mortgage or other indenture executed by the Denver Company to secure bonds or obligations issued to pay or refund the Refunding Bonds or the General Mortgage Bonds, or any of them, the Trustee, on written de- [fol. 1509] mand of the trustee or trustees of any such mortgage or mortgages, or other indenture or indentures, or on the written demand of the Preferred Stockholders Committee, and upon being indemnified to his satisfaction against any loss, damage or expense which may result from his compliance with any such request, shall offer for sale, and, after giving reasonable notice of not less than four weeks to the trustee or trustees of each of such mortgages and/or indentures and to each of the parties hereto, and publishing like notice in such manner and for such length

of time as the Trustee shall deem expedient, shall sell for the best obtainable price, at public auction, at any time and place to be determined by the Trustee, and otherwise as may be so determined, the right, title and interest of the Trustee and of the Missouri Pacific and the Western Pacific in the Utah Fuel Stock, and all right, title and interest of the Denver Company therein or in respect thereof, and/or hereunder, free and clear of any claim or demand with respect to said stock, or the avails thereof, or any dividends thereafter to be paid thereon, in favor of, or on the part of, any trustee or trustees under any of said mortgages or indentures or of the holders of any bonds or obligations secured by any thereof or of any holders of preferred stock of the Denver Company, or of any one claiming under any party hereto, whether the Utah Fuel Stock be then subject to the Consolidated Mortgage or free therefrom, provided, that if the Utah Fuel stock shall then be subject to the Consolidated Mortgage such sale shall be expressed to be subject to the Consolidated Mortgage, and shall cause the net proceeds of any such sale to be applied to the payment of the bonds or obligations secured by such mortgages or other indentures, respectively, in accordance with the relative priority of the lien of such mortgages or other indentures upon the railroad property of the Denver Company as the same shall be determined by, and in such manner as may be directed by, the Court [fol. 1510] in charge of such foreclosure proceedings, or if such enforcement is without court proceedings, as the Trustee under advice of disinterested counsel may determine. If the trustee or trustees under any such mortgage or other indenture or the Preferred Stockholders Committee shall so request, such sale of the Utah Fuel Stock and application of the proceeds thereof shall be made before the application to such payment of the property subject to such mortgages or other indentures, or the proceeds thereof. Any surplus of such proceeds remaining after payment in full of the bonds or obligations secured by said respective mortgages or other indentures shall be divided equally between the Missouri Pacific and the Western Pacific. Unless and until the Trustee shall have written notice to the contrary from one or more of the parties to this agreement, the Trustee may, for all purposes of this agreement, assume that there has been no foreclosure or enforcement of the Refunding Mortgage, or of the General

Mortgage, or of any mortgage or other indenture executed by the Denver Company to secure bonds or obligations issued to pay or refund the Refunding Bonds, or the General Mortgage Bonds, or any of them.

Sixth: The Trustee shall at any time, at the joint request in writing of the Missouri Pacific and the Western Pacific, and upon being indemnified to his satisfaction against any loss, damage or expense which may result from his compliance with any such request, sell the entire interest in the Utah Fuel Stock held hereunder, subject only to the charge thereon, if any, of the Consolidated Mortgage, at such price, or exchange the entire interest in said stock, subject only as aforesaid, for other property, on such terms, as may be authorized by the respective Boards of Directors of the Missouri Pacific and the Western Pacific and approved by the holders of record of a majority of the preferred stock of the Denver Company at the time outstand- [fol. 1511] ing either at a meeting duly called and held, or in writing without a meeting; the cash proceeds of any such sale, in the event that any Refunding Bonds or any General Mortgage Bonds or any bonds or obligations issued to pay or refund the Refunding Bonds or the General Mortgage Bonds, or any of them, shall then be outstanding, shall be paid to the Denver Company to be expended by it for any purpose for which Refunding Bonds of the Denver Company may be issued under the Refunding Mortgage, and any property received in exchange for such stock shall either be transferred to the Denver Company or, in the discretion of the Trustee, be retained by him subject to all the provisions hereof; provided, that no such sale or exchange shall be made if there shall be an existing default under the Refunding Mortgage or the General Mortgage or under any mortgage or other indenture executed by the Denver Company to secure bonds or obligations issued to pay or refund the Refunding Bonds or the General Mortgage Bonds, or any of them, which would entitle the trustee under such mortgage or other indenture to foreclose or enforce the same, and every request for any such sale or exchange shall state that no such default is then existing.

In no event shall the Trustee, or any purchaser hereunder of the Utah Fuel Stock, be required to see to the application of the cash proceeds of any such sale by the Denver Company.

Seventh: Upon the written demand of the Denver Company, its successors or assigns, or of the Missouri Pacific and the Western Pacific, jointly, or their successors or assigns, respectively, and upon being furnished with $6,000,000 in cash or $6,000,000 principal amount of the First Consolidated Mortgage 4% Fifty Year Gold Bonds, issued under the Consolidated Mortgage, with all unmatured coupons attached, the Trustee will, if he lawfully may, exer- [fol. 1512] cise the right of withdrawal of the Utah Fuel Stock granted by the Pledge Agreement. In that event, or in the event that at any time in any manner the Trustee shall become vested with title to the Utah Fuel Stock free from the lien or charge of the Consolidated Mortgage, said stock shall remain subject hereto and/or be dealt with in all respects as herein provided with respect to the interest in said stock hereby assigned to the Trustee. Until such event or until the Trustee shall in any manner become vested with title to the Utah Fuel Stock free from the line or charge of the Consolidated Mortgage, the Trustee shall be under no obligation to secure the possession of the certificates for said Utah Fuel Stock or to have the same registered in his name as Trustee hereunder and shall have no responsibility for the custody or safekeeping thereof.

Eighth: The Trustee accepts the trusts of this agreement and agrees to execute them upon the following terms and conditions to which the parties hereto agree:

(a) the Trustee shall be entitled to reasonable compensation for all services rendered by him in the execution of the trusts hereby created and such compensation as well as all reasonable expenses necessarily incurred and actually paid hereunder, together with interest thereon at the rate of six per cent. per annum, the Western Pacific and the Missouri Pacific jointly agree to pay promptly, in equal shares, from time to time as such services are rendered and as such expenses are incurred;

(b) the Trustee may employ agents or attorneys in fact and shall not be answerable for the default or misconduct of any agent or attorney appointed by him in pursuance hereof if such agent or attorney shall have been selected with reasonable care, and the Trustee shall not be responsible for anything whatever in con-

[fol. 1513] nection with this trust except his owa wilful misconduct or gross negligence;

(c) the Trustee may advise with legal counsel and shall be fully protected in respect of any action under this agreement taken or suffered in good faith by him in accordance with the opinion of counsel;

(d) the Trustee shall be protected in acting upon any notice, request, consent, certificate, demand or other paper, document or record believed by him to have been signed by the proper party or parties or to have been properly made;

(e) as to any question of fact necessary to be determined by the Trustee under the provisions hereof, and for the determination of which the method of evidence or proof is not specifically provided, the Trustee may rely upon a written certificate signed by the President or a Vice-President and by the General Auditor or Treasurer of the Denver Company, but the Trustee may make independent investigation should he so determine;

(f) the Trustee shall not be under any obligation to take any action toward the execution or enforcement of the trusts hereby created or to take action under this agreement, which in his opinion, will be likely to involve him in any expense or liability, unless one or more of the parties to this agreement shall, as often as required by the Trustee, furnish him reasonable security and indemnity against such expense or liability;

(g) the parties hereto shall be jointly and severally liable to reimburse and indemnify the Trustee for and against any liability or damage he may sustain or in-[fol. 1514] cur in the execution of this trust, and to reimburse and indemnify the Trustee for and against any liability or responsibility imposed upon him by law or otherwise as a stockholder of Utah Fuel Company.

Ninth: The Trustee may resign and be discharged from the trusts created by this agreement by giving to the Western Pacific, the Denver Company and the Missouri Pacific notice in writing of such resignation, specifying a date when such resignation shall take effect. The Trustee or

any successor hereunder may be removed at any time by an instrument in writing, executed by the Western Pacific, the Denver Company and the Missouri Pacific. In the event of the resignation, removal, death or disability of the Trustee, or any successor, a successor trustee or trustees shall be selected by resolution adopted by the affirmative vote of two-thirds of the entire authorized membership of the Board of Directors of the Denver Company. Any successor trustee may be either an individual or a corporation. Every successor trustee appointed hereunder shall execute and deliver to the Western Pacific, the Denver Company and the Missouri Pacific an instrument accepting such appointment.

Tenth: This agreement, other than the provisions of Articles Second, Third, Fourth, Fifth, Sixth and Eighth hereof, and of this Article Tenth, may at any time be amended by instrument in writing executed by the Denver Company, the Missouri Pacific and the Western Pacific. In case at any time on or after February 1, 1929, no General Mortgage Bonds or Refunding Bonds or bonds or obligations issued to pay or refund the General Mortgage Bonds or the Refunding Bonds, or any of them, shall be outstanding, this agreement shall terminate upon delivery to the Trustee [fol. 1515] of an instrument in writing executed by the Missouri Pacific or by the Western Pacific declaring such termination. Upon the termination of this agreement the Utah Fuel Stock or the interest therein then subject hereto and/or any securities or other property then subject hereto shall vest in equal shares in the Missouri Pacific and the Western Pacific.

Eleventh: The rights and interests of the Denver Company under this agreement may be pledged or assigned under the Refunding Mortgage and/or the General Mortgage and/or any mortgage or other indenture executed by the Denver Company to secure bonds or obligations issued to pay or refund the Refunding Bonds or the General Mortgage Bonds or any of them, but no such pledge or assignment shall prevent the amendment or termination of this agreement as authorized by the provisions of Article Tenth hereof, or any other action authorized by this agreement.

In the event that the rights and interests of the Denver Company hereunder shall be so pledged or assigned under

any such mortgage or other indenture, the trustee thereunder, as long as this agreement and such pledge or assignment shall remain in effect, may enforce by suit or otherwise any and all of the rights of the Denver Company hereunder. So long as this agreement shall remain in effect and any of the preferred stock of the Denver Company shall remain outstanding, any and all of the rights of the Denver Company hereunder may be enforced, by suit or otherwise, by the Preferred Stockholders Committee.

Except as herein otherwise expressly provided, all rights under this agreement may be enforced only by the parties hereto and their respective successors and assigns.

Twelfth: Subject to the provisions of Article Tenth hereof, this agreement shall remain in force so long as [fol. 1516] the Trustee shall hold hereunder any interest in the Utah Fuel Stock or any property received in exchange therefor or any proceeds of any disposition of such interest or of such stock or of any such property. Upon the termination of this agreement pursuant to Article Tenth hereof, the Trustee shall deliver or transfer all interests, property and/or moneys then held by the Trustee hereunder as in such case provided herein or as may be provided in the instrument effecting such termination.

Thirteenth: For all the purposes of this agreement, the ownership of shares of the preferred stock of the Denver Company shall be evidenced by the stock ledgers of the Denver Company. The Trustee may accept as authentic any request, approval or other instrument purporting to be executed by any owner or owners of preferred stock if the execution thereof is duly acknowledged before any official authorized to take acknowledgments of deeds of real estate for record in the State of New York.

Fourteenth: The Western Pacific, the Missouri Pacific and the Denver Company will notify The Guaranty Trust Company of New York, as Trustee under the Consolidated Mortgage, of the execution of this agreement and the rights of the Trustee in the premises hereunder.

Fifteenth: The term "the Trustee" wherever used herein shall, unless the context otherwise requires, be deemed to mean and to include the trustee or trustees for the time being, whether original or successor. The terms "the Missouri Pacific," "the Western Pacific" and "the Denver

Company" wherever used herein shall, unless the context shall otherwise require, be deemed to mean and to include, respectively, Missouri Pacific Railroad Company, The Western Pacific Railroad Corporation and The Denver and Rio Grande Western Railroad Company, and the successors and assigns of said respective corporations. Guar- [fol. 1517] anty Trust Company of New York, when referred to herein, shall be deemed to mean that corporation and/or any person or persons, corporation or corporations, at the time in question its successor or successors as trustee under the Consolidated Mortgage. The terms "preferred stock" or "preferred stock of the Denver Company" wherever used herein, shall be deemed to refer to the preferred stock of the Denver Company authorized at the date of this agreement, and shall not be deemed to refer to or include any preferred stock thereafter authorized.

In Witness Whereof, the parties hereto, other than the Trustee, have caused this instrument to be executed in their respective corporate names and their respective corporate seals to be hereto attached and attested by their respective secretaries or Assistant Secretaries, and the Trustee, in token of his acceptance of the trusts hereby created, has executed this instrument under seal, all as of the day and year first above written.

The Western Pacific Railroad Corporation, by A. R. Baldwin, President. (Seal.)

Attest: S. C. Matthews, Assistant Secretary.
In the presence of: Carl Taylor.

[fol. 1518] The Denver and Rio Grande Western Railroad Company, by Donald C. Swatland, Vice-President. (Seal.)

Attest: John J. McCloy, Assistant Secretary.
In the presence of: Carl Taylor.

Missouri Pacific Railroad Company, by William H. Williams, Chairman of the Board. (Seal.)

Attest: H. L. Utter, Secretary.
In the presence of: Albert Segren.

J. S. Alexander (L. S.)

In the presence of: C. Alison Scully.

[fol. 1519] EXHIBIT 36

Witness Wm. Wyer

The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937

Finance Docket No. 11002

Description of Utah Fuel Company and Subsidiaries

October 10, 1936.

[fol. 1520] Utah Fuel Company and Subsidiaries

Corporate History

The Utah Fuel Company was originally known as Utah Coal & Coke Company, and was incorporated October 20, 1900, under the laws of New Jersey for the objects, among others, of purchasing, leasing or otherwise acquiring coal mines or rights, coal lands or other lands convenient to the business of the company in the State of Utah or elsewhere. There are now outstanding 100,000 shares of capital stock, of no par value, all of which is pledged under the First Consolidated Mortgage of the Rio Grande Western Railway Company by Indenture dated May 23, 1901. It is subject to withdrawal from the lien of the mortgage upon payment of $6,000,000 in cash or upon the deposit with the mortgage trustee of $6,000,000 principal amount of Consolidated Mortgage bonds. On June 20, 1918, the equity in the stock owned by The Denver and Rio Grande Railroad Company was sold under a decree, the title eventually passing to The Western Pacific Railroad Company, which sold a half interest in it to the Missouri Pacific Railroad Company by agreement dated December 20, 1924, which agreement further provided in part that dividends on the Utah Fuel stock were to be distributed as follows:

(a) Dividends declared and paid prior to February 1, 1929, were to be paid to The Denver and Rio Grande Western Railroad Company.

(b) After February 1, 1929, and so long as any Refunding and Improvement or General Mortgage bonds

of The Denver and Rio Grande Western Railroad Company, or any bonds issued to refund them, are outstanding, dividends are to be paid to The Denver and Rio Grande Western Railroad Company, with one exception. If there are no arrears on The Denver and Rio Grande Western Railroad Company Preferred Stock, and moneys are available from net earnings plus the Utah Fuel dividend, and have been appropriated by The Denver and Rio Grande Western Railroad Company for dividends upon the Preferred Stock for a succeeding period of at least 12 months, and such dividends have been declared, then the Utah Fuel dividends in excess of the amount required to provide for the Preferred Stock dividends are payable to the Western Pacific and the Missouri Pacific in equal shares.

(c) If at any time no Refunding and Improvement or General Mortgage bonds, or bonds issued to refund them, are outstanding, dividends are to be paid to the Western Pacific and Missouri Pacific in equal shares.

[fol. 1521] Description of Property

The property of the Utah Fuel Company is valued on its consolidated balance sheet as of December 31, 1935, (see Exhibit B, attached) at $15,118,543, less reserves of $3,149,875. Its holdings of coal lands and surface rights at the present time are as follows:

Coal Rights Field	Acres	Recoverable Coal in Tons (60% Recovery)	Number Mines Operating	Daily Capacity (Tons)
(Utah)				
Carbon Emery	31,413	80,000,000	2	4,700
Castle Gate			1	
Sunnyside			1	
Clear Creek			1	1,200
Somerset	3,699	30,000,000		
(Colorado)				
Walsenburg	4,240	2,000,000	1	700
Total	39,313	112,000,000	6	6,600
Surface Rights only—Utah				
Utah Fuel Co.	8,203			
Utah Grazing Lands Co.	37,163			

At the rate of production obtaining in 1935 (731,391 tons), potential coal reserves will last 153 years.

The Castle Gate mines are by far the most important, both in actual and potential production. Equipment is

modern and powered by electricity; the steel tipple completed about 1928 is as efficient an installation as any in the United States.

The Clear Creek mine is old, but there are still available some 6,000,000 tons which can be produced at a reasonable cost, and equipment is fairly efficient.

The Sunnyside property contains a large amount of fairly good coal, although it is not suitable for domestic use. About 1930 natural gas was piped into Ogden and Salt Lake from the Wyoming fields, thus cutting off the market for about 40,000 tons of Sunnyside coal annually which had formerly been used for the manufacture of gas. A substantial proportion of the production in this field has been used in the past for the manufacture of coke in bee-hive ovens, but the bulk of this market has been lost to cheaper coke manufactured in modern by-product plants.

[fol. 1522] The Somerset mine contains a good quality of coal in large amounts, but its production depends almost entirely upon demand from the Denver and Rio Grande Western.

Calumet Mine No. 1 at Walsenburg has been exhausted. Mine No. 2 contains good coal in substantial amounts.

Financial Situation

A summarized comparative income account for the years 1930-1935, inclusive, is attached as Exhibit A. A consolidated balance sheet as of December 31, 1935, is attached as Exhibit B. The subsidiary companies included on this balance sheet are engaged in the following activities:

Calumet Fuel Company owns the mines at Walsenburg.

Wasatch Store Company sells supplies to the miners. There is a store at each mine. In 1935 gross sales of $258,435 resulted in net income of $8,229.

Utah Fuel Stoker Sales Company markets stokers made by the Link-Belt Company of Chicago. In 1935, 143 stokers were sold, yielding gross of $29,361. Operations for the year resulted in a loss of $476.

The Bamberger Coal Company, at Salt Lake, and the Utah Fuel-Coal Company at San Francisco, are selling organizations.

The Utah Grazing Lands Company owns land which at present is used only for grazing, and its income is derived

entirely from rentals which amounted to $4,332 in 1935. After charges there was a deficit of $295.

The greatest problem of the Utah Fuel Company is the fact that it is burdened with coal lands far in excess of its needs for many years to come, as is indicated in the summary of coal lands owned shown above. In recent years competition from Wyoming natural gas, fuel oil shipped into Salt Lake and Ogden from California, and more agressive selling by its Utah coal competitors, has served not only to reduce its total sales, but also its proportionate share of the coal marketed in Utah and Colorado. Its coke business will never be regained as coke manufactured in bee-hive ovens cannot compete with modern by-product plants which are now supplying the Salt Lake smelters, and the Utah Fuel Company did not seize its opportunity a few years ago to acquire such a plant itself. The two railroads which own the stock have themselves been forced to distribute some of their coal orders to competitors of the Utah Fuel in order to obtain reciprocal business.

The first seven months of 1936 show a marked improvement over 1935. In that period, 422,046 tons of coal and 7,097 tons of coke were sold, as compared with 363,182 tons and 3,438 tons respectively last year. Dollar sales of $902,621 compare with $733,574 in 1935.

(Here follow 2 photolithographs, side folios 1523, 1524)

UTAH FUEL COMPANY AND SUBSIDIARY COMPANIES

Exhibit A

Summaries of Consolidated Income, Years Ended December 31, 1930 to 1935, inclusive

	1930	1931	1932	1933	1934	1935
Gross Earnings from Sale of Coal, Coke and Merchandise	$2,617,804.82	$1,742,998.09	$1,306,741.99	$1,295,507.27	$1,416,869.55	$1,650,286.93
Net Earnings from Rentals, etc.	53,449.90	62,501.46	56,083.92	53,260.89	52,282.53	48,691.48
Net Income from Other Sources - Interest, etc.	40,891.54	6,631.53	10,141.14	9,440.71	7,941.12	12,370.24
Total Income	$2,712,146.26	$1,812,131.08	$1,373,967.05	$1,358,208.87	$1,477,093.20	$1,711,348.65
Operating Expenses	$2,072,418.81	$1,372,578.59	$1,011,654.88	$ 979,382.33	$1,097,727.40	$1,303,147.58
Income Charges	657,161.65	572,336.61	521,189.89	477,880.19	425,492.11	405,210.04
Total Cost	$2,729,580.46	$1,944,915.20	$1,532,844.77	$1,457,262.52	$1,523,219.51	$1,708,357.62
Total Net Income	$D 17,434.20	$D 132,784.12	$D 159,877.72	$D 99,053.65	$D 48,126.31	$D 2,991.03
Income Charges include for all mines and ovens -						
Depletion of Coal Lands	$ 16,620.	$ 14,689.	$ 13,255.	$ 14,765.	$ 15,002.	$ 15,884.
Depreciation and Amortization of Property	260,049.	254,698.	250,807.	224,822.	169,679.	160,872.

Note: D - Deficit.

1523

Exhibit B

UTAH FUEL COMPANY AND SUBSIDIARY COMPANIES

Consolidated Balance Sheet as of December 31, 1935 and 1934

	UTAH FUEL COMPANY	The Calumet Fuel Company	Wasatch Store Company	Utah Fuel Stoker Sales Company	Bamberger Coal Company	Utah Fuel-Coal Company	Utah Grazing Lands Company	Eliminations	1935	1934	I
A S S E T S											
Cash	$ 113,823	$ 61,764	$ 75,840	$ 947	$ 175	$ 1,842	$	$	$ 252,391	$ 40,759	$
Accounts Receivable:											
Railroads	57,797	3,509							61,305	231,740	
All Others	167,633	13,009	29,900	1,019	33,119	5,151	350		250,180	213,858	
Affiliated Companies	65,850		5,500					71,350			
Bills Receivable	6,047	1,700	525	4,275					12,547	15,513	
Inventories - Coal, Coke, Supplies and Merchandise	117,631	12,781	42,134	10,628	22,525	9,251			214,950	205,800	
Securities Owned:											
Guaranty Fund - U. S. Bonds Deposited in accordance with Colorado Workmen's Compensation Act	34,788	53,454							88,242	88,242	
Stocks of Subsidiary Companies (Par Value)	873,500		8,360					881,660	-	8,360	
Deferred Debit Items	2,345	2,450	100		166				5,062	8,724	
Cash Surrender Value of Insurance on Life of A. B. Apperson		9,448							9,448	8,009	
Property	13,935,364	1,052,169	67,690	259	24,087	974	38,000		15,118,543	15,256,382	
T O T A L	$15,374,778	$1,210,285	$228,048	$17,128	$80,072	$17,218	$38,350	$953,210	$16,012,668	$16,087,387	
L I A B I L I T I E S											
Accounts Payable:											
Pay Rolls, Vouchers, etc.	$ 103,152	$ 16,466	$ 19,433	$ 4,592	$ 2,705	$ 116	$	$	$ 146,464	$ 167,175	
Provision for Federal Income Tax	1,082		1,469						2,552	220	
Affiliated Companies				5,500	38,560	6,369	922	71,350			
Deferred Credit Items	250								250	250	
Accrued Expenses	14,208	9,248	711	67	320	61			24,615	23,840	
Reserves	2,638,750	461,961	39,630	374	8,486	672			3,149,875	3,205,167	
CAPITAL STOCK	10,000,000	665,500	150,000	8,360	10,000	10,000	38,000	881,860	10,000,000	10,000,000	
Excess of Par Value over Cost of Stock of Subsidiary Companies	43,599								43,599	43,599	
Unrealized Profit				1,166					1,166		

Exhibit B

1934					
ah -Coal pany	Utah Grazing Lands Company	Eliminations	1935	1934	Increase
,842	$	$	$ 252,391	$ 40,759	$211,632
			61,305	231,740	170,434 D
,151	350		250,180	213,858	36,322
		71,350			
			12,547	15,513	2,966 D
,251			214,950	205,800	9,149
			88,242	88,242	
		881,860	-	8,360	8,360 D
			5,062	8,724	3,663 D
			9,448	8,009	1,438
974	38,000		15,118,543	15,266,382	147,838 D
,218	$38,350	$953,210	$16,012,668	$16,087,387	$ 74,719 D
116	$	$	$ 146,464	$ 167,175	$ 20,711 D
			2,552	220	2,332
,369	922	71,350			
			250	250	
61			24,615	23,840	775
672			3,149,875	3,205,167	55,292 D
,000	38,000	881,860	10,000,000	10,000,000	

Consolidated Balance Sheet as of December 31, 1935 and 1934

	UTAH FUEL COMPANY	The Calumet Fuel Company	Wasatch Store Company	Utah Fuel Stoker Sales Company	Bamberger Coal Company	Utah Fuel-Coal Company	Utah Grazing Lands Company	Eliminations	19
ASSETS									
Cash	$ 113,823	$ 61,764	$ 73,840	$ 947	$ 175	$ 1,842	$	$	$ 25
Accounts Receivable:									
Railroads	57,797	3,509							6
All Others	167,633	13,009	29,900	1,019	33,119	5,151	350		25
Affiliated Companies	65,850		5,500					71,350	
Bills Receivable	6,047	1,700	525	4,275					1
Inventories - Coal, Coke, Supplies and Merchandise	117,631	12,781	42,134	10,628	22,525	9,251			21
Securities Owned:									
Guaranty Fund - U. S. Bonds Deposited in accordance with Colorado Workmen's Compensation Act	34,788	53,454							
Stocks of Subsidiary Companies (Par Value)	873,500		8,360					881,860	8
Deferred Debit Items	2,345	2,450	100		166				
Cash Surrender Value of Insurance on Life of A. B. Apperson		9,448							
Property	13,935,364	1,052,169	67,690	259	24,087	974	38,000		15,11
TOTAL	$15,374,778	$1,210,285	$228,048	$17,128	$80,072	$17,218	$38,350	$953,210	$16,01
LIABILITIES									
Accounts Payable:									
Pay Rolls, Vouchers, etc.	$ 103,152	$ 16,466	$ 19,433	$ 4,592	$ 2,705	$ 116	$	$	$ 14
Provision for Federal Income Tax	1,082		1,469						
Affiliated Companies				5,500	58,560	6,369	922	71,350	
Deferred Credit Items	250								
Accrued Expenses	14,208	9,248	711	67	320	61			2
Reserves	2,638,750	461,961	39,630	374	8,486	672			3,14
CAPITAL STOCK	10,000,000	665,500	150,000	8,360	10,000	10,000	38,000	881,860	10,00
Excess of Par Value over Cost of Stock of Subsidiary Companies	43,599								
Unrealized Profit				1,166					4
SURPLUS	2,573,736	57,109	16,805	D 2,931	-	-	D 572		2,64
TOTAL	$15,374,778	$1,210,285	$228,048	$17,128	$80,072	$17,218	$38,350	$953,210	$16,01

Note: D - Decrease or Deficit.

ah -Coal pany	Utah Grazing Lands Company	Eliminations	1935	1934	Increase
,842	$	$	$ 252,391	$ 40,759	$211,632
			61,305	231,740	170,434 D
,151	350		250,180	213,858	36,322
		71,350			
			12,547	15,513	2,966 D
,251			214,950	205,800	9,149
			88,242	88,242	
		881,860	-	8,360	8,360 D
			5,062	8,724	3,663 D
			9,448	8,009	1,438
974	38,000		15,118,543	15,266,382	147,838 D
,218	$38,350	$953,210	$16,012,668	$16,087,387	$ 74,719 D
116	$	$	$ 146,464	$ 167,175	$ 20,711 D
			2,552	220	2,332
,369	922	71,350			
			250	250	
61			24,615	23,840	775
672			3,149,875	3,205,167	55,292 D
,000	38,000	881,860	10,000,000	10,000,000	
			43,599	43,599	
			1,166		1,166
-	D 572		2,644,147	2,647,136	2,989 D
,218	$38,350	$953,210	$16,012,668	$16,087,387	$ 74,719 D

[fol. 1525]

EXHIBIT 37a

Witness Wm. Wyer

The Denver and Rio Grande Western System Proposed Plan of Consolidation and Reorganization as of January 1, 1937

Finance Docket No. 11002

This assignment made and delivered this 20th day of December, one thousand nine hundred and twenty-four, by The Denver and Rio Grande Western Railroad Company, a Delaware corporation (hereinafter called the Railroad Company), to and in favor of The Equitable Trust Company of New York, a New York corporation, as Trustee under the Refunding and Improvement Mortgage of The Denver and Rio Grande Western Railroad Company, dated February 1, 1924 (hereinafter called the Refunding Mortgage Trustee), and, subject to the rights of the Refunding Mortgage Trustee, to The Farmers' Loan and Trust Company, as Trustee under the General Mortgage of The Denver and Rio Grande Western Railroad Company, dated February 1, 1924 (hereinafter called the General Mortgage Trustee).

Witnesseth that in consideration of the sum of ten dollars ($10.00), lawful money, and other good and valuable consideration, the receipt whereof is hereby acknowledged, the Railroad Company has sold, assigned, transferred and set over and does hereby sell, assign, transfer and set over unto the Refunding Mortgage Trustee, its successors and assigns, upon the trusts set forth in said Refunding and Improvement Mortgage, and, subject thereto, to the General Mortgage Trustee upon the trusts set forth in said General Mortgage, all rights and interests of the Railroad Company in, to and under the attached agreement relating to the stock of Utah Fuel Company, between The Western Pacific Railroad Corporation, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company and James S. Alexander, as Trustees, dated December 20, 1924; provided, however, that nothing in this assignment contained shall entitle either of such Trustees to any dividends payable and/or paid to the Railroad Company under Article Second of said agreement or shall pre-

[fol. 1526] vent the exercise by the Railroad Company of

the right to consent to or take or request the taking of any action authorized by said agreement.

In Witness Whereof The Denver and Rio Grande Western Railroad Company has caused this instrument to be signed in its name by its President or a Vice-President, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, the day and year first above written.

The Denver and Rio Grande Western Railroad Company, by Donald C. Swatland, Vice-President. (Seal.)

Attest: John J McCloy, Assistant Secretary.

Copy of original document, September 16, 1936.

[fol. 1527] EXHIBIT 69

Segregation Formula Before Re ision

Utah Fuel Company Stock

The RGW Consolidated Mortgage is a first lien on all of the capital stock of the Utah Fuel Company, a detailed description of which is furnished as a separate exhibit. No dividends were paid during the year ended June 30, 1935, but $250,000 was paid in the six months ended June 30, 1934, just prior to the period included in the income account under discussion. This was the first dividend for several years, and was paid from funds accumulated through depletion of coal lands, rather than from earnings.

In determining a proper allowance to make the RGW Consols for this stock, neither the earnings of the company in the past, nor the book value of its property at the moment, furnish a suitable base. It was finally decided to allow ⅓ of the $250,000 dividend received in 1934, or $83,333, as a fair sum for the purpose of calculating the relative earnings of the various mortgage districts.

(Here follows 1 photolithograph, side folio 1528)

THE DENVER AND RIO GRANDE WESTERN SYSTEM
Proposed Plan of Consolidation and Reorganization as of January 1, 1937
Finance Docket No. 11002

Operating Revenues, Operating Expenses by General Accounts and Ratios
Maintenance Expenses incurred in connection with Additions and Betterments w
1925 to 1936 inclusive, and estimate for Normal Year

	Normal Year		1936		1935		1934		1933		1932		1931		
D&RGW (Includes D&SLW - RGVet and GV) Gross Ton Miles Excluding Locomotives and Tenders, but Including Company Freight (000)	(1)6,966,792		6,076,599		4,755,186		4,617,602		4,102,421		3,903,183		4,682,619		5,
Net Ton Miles Revenue Freight (000)	(1)2,563,173		(2)2,199,828		1,722,027		1,611,357		1,446,569		1,335,840		1,672,944		2,
	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	A
Gross Revenues	$30,734,000	100.0%	$25,599,309	100.0%	$20,944,230	100.0%	$19,246,850	100.0%	$17,112,794	100.0%	$17,340,621	100.0%	$23,484,818	100.0%	$29,
Maintenance of Way and Structures	3,995,420	13.0	4,015,100	15.7	2,491,669	11.9	2,259,308	11.7	1,640,960	9.6	1,822,743	10.4	2,703,660	11.5	3,
Maintenance of Equipment	6,146,800	20.0	6,503,865	25.4	4,861,413	23.2	4,309,191	22.4	3,460,148	20.2	3,619,224	20.6	4,485,324	19.1	5,
Total Maintenance	10,142,220	33.0	10,518,965	41.1	7,353,082	35.1	6,568,499	34.1	5,101,108	29.8	5,441,967	31.0	7,188,984	30.6	9,
Traffic	768,350	2.5	659,247	2.5	601,383	2.9	552,992	2.9	519,978	3.0	556,850	3.2	641,171	2.7	
Transportation	10,065,385	32.7	8,800,742	34.4	7,140,624	34.2	6,364,088	33.1	5,366,292	31.4	5,690,025	32.4	7,387,345	31.4	9,
Miscellaneous	230,505	.7	182,735	.7	127,227	.6	86,072	.5	57,572	.3	103,418	.6	199,088	.8	
General	1,106,424	3.6	1,012,407	4.0	963,815	4.6	1,098,593	5.7	857,173	5.0	927,948	5.3	1,034,368	4.4	1,
Transportation for Investment - Cr.	92,202	.3	235,137	.9	50,663	.2	25,183	.1	14,699	.1	9,699	.1	27,716	.1	
Total Operating Expenses	22,220,682	72.3	20,938,959	81.8	16,135,468	77.2	14,645,261	76.2	11,887,424	69.4	12,710,507	72.4	16,423,440	69.8	20,
Maintenance Expenses Incurred in Connection with Additions and Betterments Program	(3) 307,340	1.0	(4) 652,000	2.5	232,178	1.1	253,299	1.3	48,203	.3	73,703	.4	330,418	1.4	
Maintenance Expenses After Deducting Expenses Incurred in Connection with Additions and Betterments Program	9,834,880	32.0	9,866,965	38.5	7,120,904	34.0	6,315,400	32.8	5,052,905	29.5	5,368,264	30.6	6,858,566	29.2	8,
Total Operating Expenses After Deducting Expenses Incurred in Connection with Additions and Betterments Program	21,913,341	71.3	20,286,959	79.3	15,903,290	76.1	14,391,962	74.9	11,839,221	69.1	12,636,804	72.0	16,093,022	68.4	20,
D&SL Ry															
Gross Revenues	2,987,189	100.0	(5)2,840,685	100.0	2,234,861	100.0	1,820,006	100.0	1,657,331	100.0	1,915,469	100.0	2,302,835	100.0	3,
Maintenance of Way and Structures	350,000	11.7	455,765	16.0	261,026	11.7	93,942	5.8	214,820	13.0	246,893	12.9	358,080	15.5	
Maintenance of Equipment	568,000	19.0	712,120	25.1	423,916	19.1	251,474	15.5	276,358	16.7	294,125	15.4	395,308	17.2	
Traffic	20,000	.7	27,885	1.0	23,127	1.0	18,474	1.1	18,193	1.1	20,150	1.0	23,161	1.0	
Transportation	717,600	24.0	723,261	25.5	514,719	23.0	332,965	20.6	301,981	18.2	321,236	16.7	395,597	17.2	
Miscellaneous	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
General	50,000	1.7	116,332	4.1	116,482	5.2	134,365	8.2	120,152	7.2	116,464	6.1	131,228	5.7	
Transportation for Investment - Cr.	8,000	.3	77,432	2.7	62,589	2.8	16,369	1.0	42,343	2.5	19,171	1.0	-	-	
Total Operating Expenses	1,697,600	56.8	1,957,930	68.9	1,276,681	57.1	814,851	50.2	889,160	53.7	979,699	51.1	1,303,369	56.6	1

HE DENVER AND RIO GRANDE WESTERN SYSTEM
Consolidation and Reorganization as of January 1, 1937
Finance Docket No. 11002

Exhibit 17
Witness Hoyt

use, Operating Expenses by General Accounts and Ratios
incurred in connection with Additions and Betterments work
1936 inclusive, and estimate for Normal Year

33	1932		1931		1930		1929		1928		1927		1926		1925	
	3,903,183 1,335,840		4,682,819 1,672,944		5,556,238 2,057,444		5,652,079 2,250,518		5,291,893 2,082,207		5,104,996 2,036,281		4,923,761 1,944,114		4,518,532 1,854,855	
Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue	Amount	Percent of Gross Revenue
100.0%	$17,540,431	100.0%	$23,484,818	100.0%	$29,747,537	100.0%	$34,828,669	100.0%	$33,200,656	100.0%	$33,121,169	100.0%	$34,030,309	100.0%	$33,629,463	100.0%
9.6	1,822,743	10.4	2,703,860	11.5	3,862,180	13.0	5,441,659	15.6	6,178,490	18.6	6,748,481	20.4	5,899,285	17.3	5,742,197	17.0
20.2	3,619,224	20.6	4,485,224	19.1	5,577,686	18.7	6,592,013	18.9	6,164,141	18.6	6,106,950	18.4	6,242,158	18.3	5,948,303	17.6
29.8	5,441,967	31.0	7,188,984	30.6	9,439,866	31.7	12,033,673	34.5	12,342,571	37.2	12,855,431	38.8	12,141,423	35.6	11,690,500	34.6
3.0	536,850	3.2	641,171	2.7	727,410	2.5	751,492	2.1	702,899	2.1	687,957	2.1	675,673	2.0	652,277	1.9
31.4	5,490,025	32.4	7,387,345	31.4	9,179,737	30.8	10,236,514	29.3	10,003,469	30.2	10,079,155	30.4	10,304,180	30.3	10,835,670	32.3
.3	103,418	.6	199,088	.8	340,204	1.2	499,665	1.4	474,035	1.4	535,486	1.6	561,835	1.7	623,420	1.9
5.0	927,946	5.3	1,034,568	4.4	1,091,383	3.7	1,098,634	3.1	1,047,754	3.1	1,050,682	3.1	1,051,033	3.1	1,042,650	3.1
.1	9,699	.1	27,716	.1	84,799	.3	84,811	.2	128,313	.4	129,495	.4	119,630	.4	50,269	.2
69.4	12,710,507	72.4	16,423,440	69.8	20,693,801	69.6	24,535,166	70.2	24,442,415	73.6	25,079,216	75.6	24,614,314	72.3	24,796,249	73.6
.3	73,703	.4	330,415	1.4	562,601	1.9	1,304,297	3.7	1,760,932	5.3	2,154,254	6.5	1,350,883	4.0	983,145	2.9
29.5	5,368,264	30.6	6,858,566	29.2	8,877,265	29.8	10,729,376	30.8	10,581,639	31.9	10,701,177	32.3	10,790,540	31.6	10,707,355	31.7
69.1	12,636,804	72.0	16,083,022	68.4	20,131,200	67.7	23,230,869	76.5	22,681,483	68.3	22,924,962	69.1	23,263,431	68.3	23,811,104	70.7
100.0	1,915,469	100.0	2,302,835	100.0	3,197,281	100.0	3,981,131	100.0	4,011,663	100.0	4,110,286	100.0	4,268,447	100.0	3,889,321	100.0
13.0	246,893	12.9	358,080	15.5	626,161	19.6	660,393	16.6	824,448	20.8	1,108,933	27.0	1,289,899	30.3	875,946	22.5
16.7	294,125	15.4	395,303	17.8	641,779	20.1	785,256	19.7	902,749	22.5	1,217,467	29.6	1,323,389	31.0	1,120,855	28.9
1.1	20,150	1.0	23,161	1.0	26,836	1.0	26,703	.7	22,995	.6	21,636	.5	21,318	.5	18,382	.5
18.2	321,236	16.7	395,597	17.2	513,896	16.1	610,268	15.3	687,738	17.1	919,422	22.3	999,830	23.5	1,027,757	26.4
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7.2	116,466	6.1	131,228	5.7	180,937	5.6	163,993	4.1	129,486	3.2	122,320	3.0	114,953	2.7	78,398	2.0
2.5	19,171	1.0	-	-	14,651	.5	19,966	.5	31,094	.8	14,276	.3	22,988	.5	-	-
53.7	979,699	51.1	1,303,369	56.6	1,974,951	61.9	2,226,647	55.9	2,536,322	63.2	3,375,502	82.1	3,725,901	87.5	3,121,338	80.3

Betterments Program	9,834,880	32.0	9,000,905	30.9	7,440,904	34.0	6,313,400	32.8	5,052,905	29.9	5,000,804	30.0	5,000,000	31.6	6,000,000
Total Operating Expenses After Deducting Expenses Incurred in Connection with Additions and Betterments Program	21,913,341	71.3	20,886,959	79.3	15,808,290	76.1	14,391,962	74.9	11,839,221	69.1	12,636,804	72.0	16,093,022	68.4	20,131,200
D&SL Ry															
Gross Revenues	2,987,189	100.0	(5)3,840,685	100.0	2,234,881	100.0	1,820,006	100.0	1,657,331	100.0	1,915,469	100.0	2,302,835	100.0	3,197,282
Maintenance of Way and Structures	350,000	11.7	455,765	16.0	261,026	11.7	93,942	5.8	214,820	13.0	246,893	12.9	358,080	15.5	626,161
Maintenance of Equipment	568,000	19.0	712,120	25.1	423,916	19.1	251,474	15.5	276,358	16.7	294,125	15.4	395,303	17.2	641,779
Traffic	20,000	.7	27,885	1.0	23,127	1.0	18,474	1.1	18,192	1.1	20,150	1.0	23,161	1.0	26,836
Transportation	717,600	24.0	723,361	25.5	514,719	23.0	332,965	20.6	301,981	18.2	321,236	16.7	395,597	17.2	513,896
Miscellaneous	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
General	50,000	1.7	116,332	4.1	116,482	5.2	134,365	8.2	120,152	7.2	116,466	6.1	131,228	5.7	180,937
Transportation for Investment - Cr.	8,000	.3	77,432	2.7	62,589	2.8	16,369	1.0	42,343	2.5	19,171	1.0	-	-	14,651
Total Operating Expenses	1,697,600	56.8	1,957,930	68.9	1,276,681	57.1	814,851	50.2	889,160	53.7	979,699	51.1	1,303,369	56.6	1,974,951
System															
Gross Revenues	33,721,189	100.0	28,439,994	100.0	23,179,111	100.0	20,866,856	100.0	18,770,125	100.0	19,476,090	100.0	25,787,652	100.0	32,944,819
Maintenance of Way and Structures	4,345,420	12.85	4,470,865	15.7	2,752,696	11.9	2,353,450	11.3	1,855,780	9.9	2,069,636	10.6	3,061,740	11.9	4,488,341
Maintenance of Equipment	6,714,800	19.91	7,215,985	25.4	5,285,329	22.8	4,560,465	21.9	3,726,508	19.9	3,913,349	20.1	4,880,627	18.9	6,219,465
Traffic	788,350	2.34	687,132	2.4	624,510	2.7	571,456	2.7	538,170	2.9	577,000	3.0	664,332	2.6	754,266
Transportation	10,782,985	31.98	9,524,003	33.5	7,655,343	33.1	6,897,053	32.0	5,668,273	30.2	6,011,261	30.9	7,782,942	30.2	9,693,633
Miscellaneous	230,505	.68	182,735	.6	127,227	.5	86,872	.4	57,572	.3	103,418	.5	199,088	.8	340,204
General	1,156,424	3.43	1,128,739	4.0	1,080,297	4.7	1,232,958	5.9	977,325	5.2	1,044,412	5.4	1,165,796	4.5	1,272,313
Transportation for Investment - Cr.	100,202	.30	312,569	1.1	113,252	.5	41,562	.2	87,042	.3	28,870	.2	27,716	.1	99,450
Total Operating Expenses	23,918,282	71.49	22,896,889	80.5	17,412,149	75.2	15,460,112	74.0	12,776,584	68.1	13,690,206	70.3	17,726,809	68.8	22,668,752

Note 1 - Average haul per ton of revenue freight, twelve months ended November 31, 1936 — 240.0 miles

Tons of revenue freight estimated for normal year -

Carload	10,565,974	
L C L	113,915	10,679,889

Estimated revenue ton miles, normal year (1000's) — 2,563,173

1935 Gross ton miles		4,755,186
Net Ton Miles Revenue Freight		1,722,027
Ton Miles of Cars per Ton Miles of Revenue Freight		1.76138
Average Car Load 1935	31.7 tons	
" " " Normal Year	32.5 "	
" " " Increase over 1935	.8 or 2.523%	
Net Ton Miles Revenue Freight Normal Year		2,563,172
Reduced to amount comparable with 1935 by dividing by 102.523%		2,500,096
Ton Miles of Cars required at 1.76138		4,403,619
Ton Miles Revenue Freight Normal Year		2,563,173
Gross Ton Miles Normal Year		6,966,792

Source - Company Records
Estimate for normal year

February 8, 1937

Note 2 - 1935 - Gross ton miles including company freight (1000's)
Net ton miles exluding company freight (1000's)
Percent gross to net ton miles

1936 - Gross ton miles including company freight (1000's) actual
Net ton miles excluding company freight (estimate, using same ratio to gross as obtained in 1935) (1000's)

Note 3 - Estimated gross revenue, normal year

Estimate for maintenance in connection with Additions and Betterm

Way and Structures	3/4% of gross
Equipment	1/4% of gross
Total	1%

Total estimated maintenance expenses to be incurred in connection Additions and Betterments work, 1% of gross revenue

	[illegible]	[illegible]	30.6	6,858,566	29.2	8,877,265	29.8	10,729,376	30.8	10,581,639	31.9	10,701,177	32.3	10,790,540	31.6	10,707,355	31.7
	69.1	12,636,804	72.0	16,093,022	68.4	20,131,200	67.7	23,230,869	76.5	22,681,483	68.3	22,924,962	69.1	23,263,431	68.3	23,811,104	70.7
	100.0	1,915,469	100.0	2,302,835	100.0	3,197,282	100.0	3,981,131	100.0	4,011,663	100.0	4,110,286	100.0	4,268,447	100.0	3,889,321	100.0
	13.0	246,893	12.9	358,080	15.5	626,161	19.6	660,393	16.6	824,448	20.6	1,108,932	27.0	1,289,399	30.3	875,946	22.5
	16.7	294,125	15.4	395,303	17.2	641,779	20.1	785,256	19.7	902,749	22.5	1,217,467	29.6	1,323,389	31.0	1,120,855	28.9
	1.1	20,150	1.0	23,161	1.0	26,836	1.0	26,703	.7	22,995	.6	21,636	.5	21,318	.5	18,382	.5
	18.2	321,236	16.7	395,597	17.2	513,896	16.1	610,268	15.3	687,738	17.1	919,422	22.3	999,830	23.5	1,027,757	26.4
	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	7.2	116,446	6.1	131,228	5.7	180,937	5.6	163,993	4.1	129,486	3.2	122,320	3.0	114,953	2.7	78,398	2.0
	2.5	19,171	1.0	-	-	14,651	.5	19,966	.5	31,094	.8	14,276	.3	22,988	.5	-	-
	53.7	979,699	51.1	1,303,369	56.6	1,974,951	61.9	2,226,647	55.9	2,536,322	63.2	3,375,502	82.1	3,725,901	87.5	3,121,338	80.3
	100.0	19,476,090	100.0	25,787,653	100.0	32,944,819	100.0	38,809,800	100.0	37,212,319	100.0	37,231,455	100.0	38,298,756	100.0	37,518,784	100.0
	9.9	2,089,636	10.6	3,061,740	11.9	4,468,341	13.6	6,102,052	15.7	7,002,878	18.8	7,857,414	21.1	7,188,664	18.6	6,618,143	17.6
	19.9	3,913,349	20.1	4,880,627	18.9	6,219,465	18.9	7,377,269	19.0	7,066,890	19.0	7,324,417	19.7	7,565,547	19.7	7,069,158	18.9
	2.9	577,000	3.0	664,332	2.6	756,265	2.3	778,195	2.0	725,894	1.9	709,893	1.9	696,991	1.8	670,659	1.8
	30.2	6,011,261	30.9	7,782,942	30.2	9,693,633	29.4	10,846,782	28.0	10,691,207	28.8	10,998,577	29.4	11,304,010	29.5	11,863,427	31.6
	.3	103,418	.5	199,088	.8	340,204	1.0	499,665	1.3	474,035	1.3	535,486	1.4	561,835	1.5	623,420	1.7
	5.2	1,044,412	5.4	1,165,796	4.5	1,272,313	3.9	1,262,627	3.2	1,177,240	3.1	1,173,002	3.2	1,165,986	3.0	1,121,048	3.0
	.3	28,870	.2	27,716	.1	99,450	.3	104,777	.3	159,407	.4	143 771	.4	142,818	.4	50,269	.1
	68.1	13,690,206	70.3	17,726,809	68.8	22,668,752	68.8	28,761,813	68.9	28,978,737	72.5	28,454,718	76.3	28,340,215	73.7	27,915,587	74.5

935 - Gross ton miles including company freight (1000's) 4,755,186
Net ton miles exeluding company freight (1000's) 1,722,027
Percent gross to net ton miles 276.14%

936 - Gross ton miles including company freight (1000's) actual 6,074,599
Net ton miles excluding company freight (estimate, using same ratio to gross as obtained in 1935) (1000's) 2,199,826

Estimated gross revenue, normal year $30,734,000

Estimate for maintenance in connection with Additions and Betterments work -

Way and Structures	3/4% of gross	
Equipment	1/4% of gross	
Total	1%	1%

Total estimated maintenance expenses to be incurred in connection with Additions and Betterments work, 1% of gross revenue $ 307,340

Note 4 - Estimate, maintenance of way only 588,000
Add 1/4% on estimate for maintenance of equipment 64,000
652,000

Note 5 - December 1936 figures for D&SL are estimated.

[fol. 1529] EXHIBIT 117-a

Witness Pyeatt

The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937

Finance Docket No. 11002

Correction in Exhibit 117

In column headed "Normal Year", following corrections should be made:

Gross Ton Miles Excluding Locomotives and Tenders, but including Company Freight (1000's)	(1)	7,228,028
Net Ton Miles Revenue Freight (1000's)	(1)	2,659,292

Note 1 should be corrected to read as follows:

Note 1. Average haul per ton of revenue freight, eleven months ended November 30, 1936		249.0 miles
Tons of revenue freight estimated for normal year—		
Carload	10,565,974	
Less than Carload	113,915	10,679,889
Estimated revenue ton miles, normal year (1000's)		2,659,292
1935—Gross ton miles, including company freight		4,755,186
Net ton miles, revenue freight		1,722,027
Ton Miles of Cars and Company freight per ton mile of revenue freight		1.76139
Average carload, carload revenue freight only, 1935	31.7 tons	
Average carload, carload revenue freight only, Normal Year	32.5	
	.8 or 2.524%	

[fol. 1534]

The Denver and Salt Lake Railway Company
Estimated Income Account for "Normal Year"

		Normal Year	Per cent of Operating Revenues
Railway Operating Revenues:			
Freight		$2,790,189	93.4
Passenger		90,000	3.0
Mail		65,000	2.2
Express		12,000	.4
Miscellaneous		15,000	.5
Incidental		15,000	.5
Total Railway Operating Revenues		2,987,189	100.0
Railway Operating Expenses:			
Maintenance of Way and Structures		$350,000	11.7
Maintenance of Equipment		565,600	19.0
Traffic		20,000	.7
Transportation		717,600	24.0
General		50,000	1.7
Transportation for Investment—Cr.		8,000	.3
Total Railway Operating Expenses		1,697,600	56.8
Net Revenue from Railway Operations		1,289,589	
Tax Accruals		275,000	
Railway Operating Income		1,014,589	
Equipment Rents—Net Debit		65,000	
Joint Facility Rents—Net Credit		537,950	
Total Rents		472,950	
Net Railway Operating Income		1,487,539	
Non-Operating Income		20,000	
Gross Income		1,507,539	
Miscellaneous Deductions from Gross Income:			
Rent for Leased Road	$404,200		
Miscellaneous Income Charges	10,274	414,474	
Amount Available for Interest		1,093,065	

[fol. 1536]

EXHIBIT 155
Witness Wyu

The Denver and Rio Grande Western System
Proposed Plan of Consolidation and Reorganization as of January 1, 1937
Finance Docket No. 11002

Utah Fuel Company and Subsidiary Companies
Consolidated Income Account—1936
(Supplement to Exhibit 36)

Gross earnings from sale of coal, coke, merchandise, etc.	$1,902,202	
Net earnings from rentals, etc.	48,629	
Net income from other sources, interest, etc.	8,179	
		$1,959,009
Operating Expenses	$1,563,959	
Income Charges	383,988	1,947,947
Net Income (before charging Federal Income Taxes)		$11,062
Provision for Federal Income Taxes		3,509
Net Income (after charging Federal Income Taxes)		$7,553

Corrections in Exhibit A of Exhibit 36:

(1) Total Net Income for years 1934 and 1935 are shown as deficits of $46,126.31 and $2,991.03, respectively. The correct figures are a deficit of $46,346.14 for 1934, and a net income of $439.37 for 1935. The corrected figures are after Federal Income Taxes of $219.83 in 1934; and $2,551.66 in 1935.

(2) The charges for "Depletion of Coal Lands" and "Depreciation and Amortization of Property" for all mines and ovens which are included in "Income Charges" are shown in the lower half of the statement. The figures shown cover the Utah Fuel Company only. Figures for the consolidated income account should include the Calumet Fuel Company also, and the correct figures are shown below:

	Depletion of Coal Lands	Depreciation and Amortization of Property
1930	$20,906	$300,929
1931	17,212	298,568
1932	14,752	295,654
1933	15,586	267,060
1934	16,330	210,397
1935	17,936	194,706
1936	19,439	187,321

Source: Company records.
May 12, 1937.

Cash	$ 160,651	$ 91,934	$ 82,014	$ 504	$ 175	$ 2,803	$	$	$ 338
Accounts Receivable:									
Railroads	51,748	6,643							58
All Others	147,974	10,308	35,368	2,096	32,195	4,045	250		232
Affiliated Companies	51,867						976	52,842	
Bills Receivable	6,405	2,162	33	790					9
Inventories - Coal, Coke, Supplies, Merchandise, etc.	113,179	22,677	46,391	3,733	18,487	11,884			216
Securities Owned:									
Guaranty Fund - U. S. Bonds Deposited in accordance with Colorado Workmen's Compensation Act	34,788	53,454							88
Stocks of Subsidiary Companies (Par Value)	873,500		8,360					881,860	
Deferred Debit Items	6,828	3,656	172		216				10
Cash Surrender Value of Insurance on Life of A. B. Apperson		5,398							5
Property	14,047,704	1,009,432	60,245	130	15,240	1,192	38,000		15,17
TOTAL	$15,494,644	$1,205,665	$232,582	$ 7,254	$66,313	$19,924	$39,226	$934,702	$16,13
LIABILITIES									
Accounts Payable:									
Pay Rolls, Vouchers, etc.	$ 138,010	$ 21,857	$ 21,028	$ 970	$ 2,822	$ 42	$	$	$ 18
Provision for Federal Income Taxes	885	206	2,174				244		
Affiliated Companies	976			675	43,099	7,983	110	52,842	
Deferred Credit Items	250								
Accrued Expenses	11,140	7,246	758		847	93			2
Reserves	2,735,911	451,135	33,651	128	4,090	770			3,22
CAPITAL STOCK	10,000,000	665,500	150,000	8,360	10,000	10,000	38,000	881,860	10,00
Excess of Par Value over Cost of Stock of Subsidiary Companies	43,599								4
Unrealized Profit				209					
SURPLUS	2,563,872	59,721	24,971	D 3,087	5,454	1,037	872		2,65
TOTAL	$15,494,644	$1,205,665	$232,582	$ 7,254	$66,313	$19,924	$39,226	$934,702	$16,13

Note: D - Decrease or Deficit.

Source: Company Records.

June 4, 1937.

Ton miles revenue freight, normal year	2,659,292
Reduced to amount comparable with 1935 by dividing by 102.524%	2,593,824
Ton miles of cars and company freight required at 1.76139	4,568,736
Ton miles revenue freight, normal year	2,659,292
Gross ton miles, normal year	7,228,028

March 19, 1937

[fol. 1530] EXHIBIT No. 118

Witness: Pyeatt.

The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937

Finance Docket No. 11002

Forecast of Net Income Available for Interest for a Normal Year for The Denver and Rio Grande Western Railroad Company

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[fol. 1532]

The Denver and Rio Grande Western Railroad Company

Including the Denver & Salt Lake Western Railroad Company, Goshen Valley Railway Company and the Rio Grande Junction Railway Company

Estimated Amount Available for Interest for a "Normal Year"

	Normal Year	Per cent of Operating Revenues
Railway Operating Revenues:		
Freight	$27,884,000	90.73
Passenger	1,525,000	4.96
Mail	475,000	1.54
Express	300,000	.98
Dining and Buffet	150,000	.49
Other	400,000	1.30
Total Railway Operating Revenues	$30,734,000	100.00
Railway Operating Expenses:		
Maintenance of Way and Structures	$3,955,420	13.00
Maintenance of Equipment	6,146,800	20.00
Traffic	768,350	2.50
Transportation	10,065,385	32.75
Miscellaneous	230,505	.75
General	1,105,424	3.60
Transportation for Investment—Cr.	92,202	.30
Total Railway Operating Expenses	$22,220,682	72.30
Net Revenue from Railway Operations	$8,513,318	
Railway Tax Accruals	2,700,000	
Railway Operating Income	$5,813,318	
Equipment Rents—Net Debit	$600,000	
Joint Facility Rents—Net Debit	265,000	
Total Rents	$865,600	
Net Railway Operating Income	$4,948,318	
Non-Operating Income	300,000	
Gross Income	$5,248,318	
Miscellaneous Deductions	50,000	
Amount Available for Interest	$5,198,318	

[fol. 1533]

EXHIBIT 119

January 18, 1937—Witness Pyeatt

The Denver and Rio Grande Western System

Proposed Plan of Consolidation and Reorganization as of January 1, 1937

Finance Docket No. 11002

[fol. 1585]

EXHIBIT 120

Witness: Pyeatt

The Denver and Rio Grande Western System

Estimated Amount Available for Interest for a "Normal Year"

	Denver and Rio Grande Western R.R. Co.	Per cent of Operating Revenues	Denver and Salt Lake Railway Company	Per cent of Operating Revenues	Denver and Rio Grande Western System	Per cent of Operating Revenues
Operating Revenues:						
Freight	$27,884,000	90.73	$2,790,189	93.4	$30,674,189	90.96
Passenger	1,525,000	4.96	90,000	3.0	1,615,000	4.79
Mail	475,000	1.54	65,000	2.2	540,000	1.60
Express	300,000	.98	12,000	.4	312,000	.93
Miscellaneous	550,000	1.79	30,000	1.0	580,000	1.72
Total	$30,734,000	100.00	$2,987,189	100.00	$33,721,189	100.00
Operating Expenses:						
M. of W. & S.	$3,995,420	13.00	$350,000	11.7	$4,345,420	12.85
M. of Equipment	6,146,800	20.00	568,000	19.0	6,714,800	19.91
Traffic	768,350	2.50	20,000	.7	788,350	2.34
Transportation	10,065,385	32.75	717,600	24.0	10,782,985	31.98
General	1,106,424	3.60	50,000	1.7	1,156,424	3.43
Miscellaneous	230,505	.75			230,505	.68
Transportation for Invest.—Cr.	92,202	.30	8,000	.3	100,202	.30
Total	$22,220,682	72.30	$1,697,600	56.8	$23,918,282	71.49
Net Revenue from Ry. Operations	$8,513,318		$1,289,589		$9,802,907	
Tax Accruals	2,700,000		275,000		2,975,000	
Railway Operating Income	$5,813,318		$1,014,589		$6,827,907	
Equipment Rents Net Debit	600,000		65,000		665,000	
Joint Facility Rents—Net Credit	265,000 Dr.		537,950		272,950	
Total Rents	$865,000 Dr.		$472,950 Cr.		$392,050 Dr.	

EXHIBIT 120—Continued

Witness: Pyeatt
The Denver and Rio Grande Western System
Estimated Amount Available for Interest for a "Normal Year"

	Denver and Rio Grande Western R.R. Co.	Per cent of Operating Revenues	Denver and Salt Lake Railway Company	Per cent of Operating Revenues	Denver and Rio Grande Western System	Per cent of Operating Revenues
Net Railway Operating Income	$4,948,318		$1,487,539		$6,435,857	
Non-Operating Inc.	300,000		20,000		244,040	
Gross Income	$5,248,318		$1,507,539		$6,679,897	
Misc. Deductions from Gross Inc.	50,000		414,474		464,474	
Amount Available for Interest	$5,198,318		$1,093,065		$6,215,423	

NOTE: Inter-Company item eliminated from Non-Operating Income—Interest on $1,266,000 D. & S. L. First Mortgage 6% Bonds—$75,960.

February 6, 1937.

(Here Follows 1 Photolithograph, Side Folio 1537)

THE DENVER AND RIO GRANDE WESTERN SYSTEM
Proposed Plan of Consolidation and Reorganization as of January 1, 1937
Finance Docket No. 11002

UTAH FUEL COMPANY AND SUBSIDIARY COMPANIES
Consolidated Balance Sheet as of December 31, 1936 and 1935

ASSETS	Utah Fuel Company	The Calumet Fuel Company	Wasatch Store Company	Utah Fuel Stoker Sales Company	Bamberger Coal Company	Utah Fuel-Coal Company	Utah Grazing Lands Company	Eliminations	CONSOLIDATION 1936	CONSOLIDATION 1935
Cash	$ 160,651	$ 91,934	$ 82,014	$ 504	$ 175	$ 2,803	$	$	$ 338,082	$ 252,3
Accounts Receivable:										
Railroads	51,748	6,643							58,391	61,3
All Others	147,974	10,308	35,368	2,096	32,195	4,045	250		232,236	250,1
Affiliated Companies	51,867						976	52,842		
Bills Receivable	6,405	2,162	33	790					9,390	12,5
Inventories - Coal, Coke, Supplies, Merchandise, etc.	113,179	22,677	46,391	3,733	18,487	11,884			216,350	214,9
Securities Owned:										
Guaranty Fund - U. S. Bonds Deposited in accordance with Colorado Workmen's Compensation Act	34,788	53,454							88,243	88,2
Stocks of Subsidiary Companies (Par Value)	873,500		8,360					881,860		
Deferred Debit Items	6,828	3,656	172		216				10,872	5,0
Cash Surrender Value of Insurance on Life of A. B. Apperson		5,398							5,398	9,4
Property	14,047,704	1,009,432	60,245	130	15,240	1,192	38,000		15,171,943	15,118,5
TOTAL	$15,494,644	$1,205,665	$232,582	$ 7,254	$66,313	$19,924	$39,226	$934,702	$16,130,904	$16,012,6
LIABILITIES										
Accounts Payable:										
Pay Rolls, Vouchers, etc.	$ 138,010	$ 21,857	$ 21,028	$ 970	$ 2,822	$ 42	$	$	$ 184,729	$ 146,4
Provision for Federal Income Taxes	885	206	2,174				244		3,509	2,5
Affiliated Companies	976			675	43,099	7,983	110	52,842		
Deferred Credit Items	250								250	2
Accrued Expenses	11,140	7,246	758		847	93			20,084	24,6
Reserves	2,735,911	451,135	33,651	128	4,090	770			3,225,685	3,149,8
CAPITAL STOCK	10,000,000	665,500	150,000	8,360	10,000	10,000	38,000	881,860	10,000,000	10,000,0
Excess of Par Value over Cost of Stock of Subsidiary Companies	43,599								43,599	43,5
Unrealized Profit				209					209	1,1
SURPLUS	2,563,872	59,721	24,971	D 3,087	5,454	1,037	872		2,652,838	2,644,1
TOTAL	$15,494,644	$1,205,665	$232,582	$ 7,254	$66,313	$19,924	$39,226	$934,702	$16,130,904	$16,012,6

	CONSOLIDATION		
iminations	1936	1935	Increase
$	$ 338,082	$ 252,391	$ 85,692
	58,391	61,305	2,914 D
	232,236	250,180	17,945 D
52,842			
	9,390	12,547	3,157 D
	216,350	214,950	1,401
	88,243	88,243	
881,860			
	10,872	5,062	5,810
	5,398	9,448	4,050 D
	15,171,943	15,118,543	53,399
$934,702	$16,130,904	$16,012,668	$118,236
$	$ 184,729	$ 146,464	$ 38,265
	3,509	2,552	957
52,842			
	250	250	
	20,084	24,615	4,531 D
	3,225,685	3,149,875	75,810
881,860	10,000,000	10,000,000	
	43,599	43,599	
	209	1,166	957 D
	2,652,831	2,644,147	8,692
$934,702	$16,130,904	$16,012,668	$118,236

[fol. 1538]

R. & I. TRUSTEE'S EXHIBIT 246
Witness: Warner

The Denver and Rio Grande Western Railroad Company Reorganization
Finance Docket No. 11002

Property Values as Derived from Bureau of Valuation Elements of Value as of December 31, 1935, and Rates of Earnings thereon during Test Period computed on basis of Railway Earnings as adjusted on Debtor's Exhibit 113 (Straight Mileage Prorate)

(D denotes Deficit or Debit)

	Net Railway Operating Income 1.	San Luis Valley Potato Adjustment 2.	Miscellaneous Rent Income less Rent for Leased Road 3.	Total of Columns 1, 2, 3 4.	Adjustment for hauling Company Material 5.	Adjusted Income from Railway Operations Amount 6.	% Return on Basis Column 13 Line e. 7.	Line g. 8.
Denver & Rio Grande Western R. R. including Denver & Salt Lake Western R. R., Rio Grande Jct. Ry. and Goshen Valley R. R.)								
Total	2,442,342	182,342	88,398	2,713,081		2,713,081	2.11	
Deduct Narrow Gauge	703,624D		14,370	689,254D	135,443	553,811D		
Standard Gauge Only	3,145,966	182,342	74,028	3,402,335	135,443D	3,266,892		2.94

	Property Values as of December 31, 1935				
	Reproduction Less Depreciation		Lands		Total Cols. 9 to 12 incl.
	Road 9.	Equipment 10.	Carrier 11.	Non-Carrier 12.	13.
a. Denver & Rio Grande Western R. R.	$94,535,747	$20,932,009	$4,333,196	$1,094,963	$120,895,915
b. Denver & Salt Lake Western R. R.	3,880,723		7,219		3,887,942
c. Rio Grande Jct. Ry.	3,409,074		54,006	6,324	3,469,404

R. & I. Trustee's Exhibit 246—Continued

d. Goshen Valley R. R.	270,756		1,908		272,664
e. Total of above	102,096,300	20,932,069	4,396,329	1,401,287	128,525,925
f. Deduct Narrow Gauge	14,958,871	1,974,829	545,078		17,478,778
g. Standard Gauge Only	87,137,429	18,957,180	4,952,538		111,047,147
h. Working Capital not included above					2,473,400
i. Total including Working Capital					113,520,547

The foregoing figures do not include so-called Other Elements of Value. In the Commission's valuation of the D. & R. G. W. properties as of June 30, 1919, Valuation Docket 960, it found a final value of $104,457,348 for total owned property including the Junction and Kenilworth and Heiger R. R. S. or $5,895,803 in excess of the $98,561,545 reproduction less depreciation value plus lands. If, for working capital, and going concern value, etc., there be added to the present standard gauge reproduction less depreciation value plus standard gauge lands of $111,047,147
the entire above figure of 5,895,803
there is obtained as the total figure for the standard gauge 116,942,950

Detail of Narrow Gauge Valuation Deducted in above Schedule to Determine Standard Gauge Valuation

Elements of Value December 31, 1935

	Reprod. Less Deprec.		Lands	
	Road	Equipment	Carrier and Non-Carrier	Total
	14.	15.	16.	17.
Eastern Consols	$14,129,624	$458,898	$532,396	$15,120,918
R. & I.	829,247	1,129,493	12,682	1,971,422
Equipment Trusts		385,973		385,973
Not specifically allocated		465		465
Total Narrow Gauge	14,958,871	1,974,829	545,078	17,478,778

[fol. 1539] Exhibit 253—Witness Burdick

A Valuation of the Utah Fuel Company Properties and of Its Subsidiary Concerns. E. H. Burdick, Mining Engineer & Geologist, Judge Building, Salt Lake City, Utah, 1937.

[fol. 1540] INDEX

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[fol. 1541] History of the Utah Fuel Company

The Utah Fuel Company was organized October 20, 1900 under the laws of the State of New Jersey, with a Capital of $10,000.00 represented by 100 shares of common stock. Capitalization increased October 31, 1900 to $10,000,000.00.

Prior to December 31, 1931 this company acquired the following companies and properties, and continued to operate them as subsidiaries:

1. The Pleasant Valley Coal Company:

Organized under the laws of Utah, September 6, 1882, with a capitalization of $200,000.00, and on August 28, 1890 increased to $2,000,000.00 represented by 20,000 shares of $100.00 each. Acquired October 31, 1900.

At the time of acquisition, the Pleasant Valley Coal Company operated the Winter Quarters, Castle Gate and Clear Creek mines, all in Carbon County, Utah, and had a well established business. It also owned the "Utah Mine" which was the original nucleus of the company. Utah Mine was not working at the time of purchase, but was inter-

mittently operated thereafter until final closure and abandonment in 1925.

2. Wasatch Store Company:

Organized under the laws of the State of Utah, April 8, 1892 with a Capital stock of $25,000.00, divided into 250 shares of $100 each. Later capitalization was increased and at December 31, 1936 there was $150,000.00 stock outstanding.

The Company conducted a general mercantile business and maintained stores at each of the mine units.

3. Holladay Coal Company:

This company was organized March 30, 1897 under the laws of the State of Utah with a capitalization of $200,000.00, represented by 2000 shares of $100.00 each.

Acquired October 31, 1900.

This company was the owner of 2,412.76 acres of coal lands at Sunnyside, Utah and had a mine operating therein when the company was acquired by the Utah Fuel Company.

[fol. 1542] 4. The Calumet Fuel Company:

Organized October 27, 1904 under the laws of the State of Colorado, with authorized capital stock of $1,000,000.00, represented by 1000 shares of $100.00 each.

This company was acquired January 31, 1905 for $624,400.71. At the time of purchase, $665,500.00 of the capital stock had been issued. It was maintained as a separate company and acquired property in six different districts in Colorado and New Mexico.

In addition to the mining unit purchased, there was included a narrow gauge railroad about four miles in length, extending from the mine to a point about three miles from Durango, Colorado, where it connected with the Rio Grande Southern Railroad.

The mine in operation at Perins Peak had been opened up by the Boston Coal and Fuel Company which was acquired by the Calumet Fuel Company January 31, 1905.

5. Sterling Coal and Coke Company:

Organized May 21, 1894 under the laws of Utah, with a capital stock of $300,000.00, represented by 3000 shares of $100.00 each.

Acquired by the Utah Fuel Company February 18, 1908. The lands held by this company consisted of 472.03 acres in the Morrison District, Sanpete County, Utah. After acquisition by the Utah Fuel Company, the Sterling Coal and Coke Company was dissolved, and the property has been carried directly under the Utah Fuel Company.

6. Castle Gate Coal, Coke and Fuel Company:

Organized September 6, 1913 under the laws of the State of Utah, with a capital stock of $100.00, represented by 100 shares of $1.00 each.

This was a corporation formed for the purpose of protecting the trade name "Castle Gate." It has no assets.

Mines Operated as of December 31, 1921

Utah Fuel Company

Sunnyside Mine—(Utah)—The Sunnyside Mine is located [fol. 1543] at the terminus of the Sunnyside Branch of the Denver & Rio Grande Western Railroad, Carbon County, Utah. Throughout the Sunnyside area there are two seams of coal, one above the other separated by a variable rock thickness between them of from six to forty feet. This situation might be more correctly viewed as one seam with a rock "split" of varying thickness within the coal bed itself. Going south, the two parts join and form one seam. The same is true over small areas in the southern part of the Sunnyside mine unit.

The original mine opening was made in May, 1900 on the lower bed by means of a tunnel operation extending inward from the outcrop and within the bed itself, which gently sloped away from the surface exposure. This mine was designated as Mine No. 1. Later a mine was opened on the upper bed and was designated No. 4 Mine. Mines Nos. 1 and 4 discharge onto the same tipple and in addition have underground connections. Like mining attempts were made in the south Sunnyside areas by means of Mines Nos. 2 and 3. These south mines have haulage to the tipple which is separate from that for Mines Nos. 1 and 4. All four mines of the Sunnyside group could properly be considered as one mine.

The Sunnyside mining unit acreage and that extending southward therefrom for about three miles cover practically

all of the known area in Utah containing coal of metallurgical coking quality. Due to this fact, the Sunnyside operations occupied a dominant position in importance among Utah Fuel Company mines.

Area of Sunnyside Unit, 23,475 acres.

Average normal annual output, 670,000 tons.

Quality of coal, bituminous and of coking quality. Its composition is fairly represented by the following proximate analysis:

Proximate Analysis

Moisture	3.9%
Volatile	38.0
Fixed Carbon	53.0
Ash	5.1
	100.0%
Sulphur	.50
B. T. U.	13,520
B. T. U.-Moisture Free	14,070

[fol. 1543a] As of 1921, practically seventy per cent of the mine output was coked upon the ground. The coke equipment consisted of 819 Beehive ovens of six tons coal capacity each and capable of producing 3.3 tons of coke each forty-eight hours.

Somerset Mine—(Colorado)—The Somerset Mine unit is located in Gunnison and Delta counties on the Somerset Branch of the Denver & Rio Grande Western Railroad extending from Delta, Colorado up the north fork of the Gunnison River, a distance of some forty miles. In the vicinity of Somerset, four coal beds are present, the mine being opened on the second above the heavy Rollins Sandstone base. On this latter, the lowest of "A" seam rests, a bed about four feet in thickness. Fifteen feet above is the "Somerset" or "B" seam within the upper 11 to 13 feet of which the mine workings were driven. Thirty to sixty feet higher occurs the 7 to 8 foot "C" seam, 200 feet above which is the 15 to 20 foot "D" seam.

The mine was opened by means of a slope within the gently northward dipping Somerset bed, extending downward along the pitch. By 1921 the main slope had reached a point near the north boundary line of the property, about one and one-quarter miles in from the portal. Thirteen

pairs of entries had been driven east and west from the slope, some of which attained a length of over a mile.

The "cover" or superimposed strata over the deeper workings attained great thickness, being at some points up to 3,000 feet.

In 1920 fires commenced to develop in the mine. These were in all probability due to the extreme pressure of the overburden. These fires could only be controlled by hermetically sealing the general mine area in which they were located. By the end of 1921 possibly one-tenth of the territory opened by the Somerset Mine within the Somerset seam had been sealed off.

Area of the Somerset unit, 3411.93 acres.

Average normal annual output, 275,000 tons.

Tipple capacity 1200 tons, one shift.

Quality of coal, a good grade of bituminous and non-coking in character. Its composition is fairly represented by the following proximate analysis:

[fol. 1544] Proximate Analysis

Moisture	3.5%
Volatile	39.0
Fixed Carbon	52.0
Ash	5.5
	100.0%
Sulphur	.55%
B. T. U.	13,250
B. T. U.—Moisture Free	13,730

Pleasant Valley Coal Company

Castle Gate No. 1 Mine. This mine was opened in 1886 and is situated at Castle Gate on the Denver & Rio Grande Western Railroad. At the time of opening of this mine it was not known that there were any beds of coal other than the bottom or Castle Gate seam which is now known as the "A" bed. The mine was opened by means of a slope following up the pitch of the coal and within the coal bed itself. For many years this mine furnished the major portion of the coal output of the company. Later, workings

were extended to some of the overlying seams which were workable over rather restricted areas. Extraction was accomplished largely by means of room and pillar work.

The coal is a fine grade of bituminous and non-coking in character. It was very satisfactory for both steam and domestic purposes.

The average annual output of this mine was around 170,000 tons. It discharged onto the same tipple over which the product from No. 2 Mine was passed, the Castle Gate No. 1 product coming in at the west end of the tipple and the No. 2 tonnage from the opposite side. The tipple was so constructed that it could handle 1500 tons of coal from No. 1 Mine per eight-hour shift.

A representative analysis follows:

Proximate Analysis

Moisture	2.3%
Volatile	39.4
Fixed Carbon	53.9
Ash	4.4
	100.0%
Sulphur	.76%
B. T. U.	13,441
B. T. U.—Moisture Free	13,757

[fol. 1545] *Castle Gate No. 2 Mine.* This mine is situated at Castle Gate, Utah and was opened in 1911 by means of a tunnel within the coal bed extending easterly about one and one-half miles. The mine was originally opened on the lowest or "A" seam. As this seam thinned going to the east, operations were transferred to the next seam above, designated as the "B" seam, and large quantities of coal mined therefrom on the "raise" side of the main tunnel. Subsequently the presence of the fourth of "D" seam was discovered and as this was a much thicker bed of good quality, operations were transferred to this horizon.

A slope in this coal bed was driven to the north for approximately one mile and nine pairs of entries turned therefrom. The "D" seam, or upper bed, ranged from 10

to 25 feet in thickness. Production from this mine would be limited only by tipple capacity and market.

Tipple capacity as of 1921 from No. 2 Mine was approximately 1500 tons, working one shift, making the joint capacity of Nos. 1 and 2 mines 3000 tons.

Normal average annual production for No. 2 Mine is 236,000 tons. The coal is a good grade of bituminous but inclined to be banded with lenses of bony material.

The following is a representative analysis:

Proximate Analysis

Moisture	2.6%
Volatile	42.7
Fixed Carbon	49.1
Ash	5.6
	100.0%
Sulphur	.36%
B. T. U.	13,180
B. T. U.—Moisture Free	13,533

Clear Creek Mine. This mine is situated at the terminus of the Scofield Branch of the Denver & Rio Grande Western Railroad in what is known as Pleasant Valley. It was opened in July, 1899 by means of entries driven from the outcrop and within the coal bed. There are two workable beds of coal present over this area, the lower known as the Clear Creek Seam which varies from 6 to 14 feet in thickness, and within which the main mine opening was driven. From the mine workings in the lower seam, re- [fol. 1546] stricted development was carried on in the upper bed, but production costs, due to thinness of the bed, precluded profitable operations.

The Clear Creek Mine in its early history was one of the important Utah mines. There was a demand for the product for domestic purposes. The coal is a fair grade of bituminous, but carries a relatively high percentage of water of crystal-ization and hence does not store well.

The average normal annual output of this mine was around 250,000 tons. (Year 1920—271,000; 1921—192,000 tons.)

The following proximate analysis indicates the chemical properties of the coal:

Proximate Analysis

Moisture 221° F.	5.96%
Comb. Vol.	38.2
Fixed Carbon	49.61
Ash	6.16
	100.0%
Sulphur	.393%
B. T. U.	12,591

Utah Mine. This mine is located on the Scofield Branch of the Denver & Rio Grande Western Railroad about four miles north of the Clear Creek and between it and the Winter Quarters Mine. The mine was opened by a tunnel within the Utah coal bed which is probably the same as the lower bed at Clear Creek. The mine was opened in 1882, but was closed in 1884 and up until 1921 had operated only intermittently.

The Utah Mine territory is badly cut up by faults and the coal bed crushed and dislocated. The coal was about the same quality as Clear Creek. For the ten years preceding 1922 the mine averaged 40,867 tons output per year.

Winter Quarters Mine. The Winter Quarters Mine is located in Pleasant Valley on a short switch track from the town of Scofield on the "Scofield Branch" of the Denver & Rio Grande Western Railroad. The mine was opened in 1884 by tunnel and slope workings from the outcrop of the Winter Quarters coal bed and within the same. From the date of opening and until 1921, the mine was worked continuously and many miles of entries and tunnels were driven.

[fol. 1547] The quality of the coal was about the same as that at Clear Creek and Utah mines. It was a fair grade of bituminous with a relatively high percentage of water of crystal-ization. It was inclined to break in handling and was not a good keeper.

A normal average annual output through the life of the mine up to and including 1921 was around 270,000 tons per year.

The tipple had a capacity of 2000 tons per one shift.

A characteristic analysis follows:

Proximate Analysis

Moisture	6.90%
Volatile	43.10
Fixed Carbon	44.80
Ash	5.20
	100.00%
Sulphur	.72%
B. T. U.	12,470
B. T. U.—Moisture Free	13,400

The

The Calumet Fuel Company

Perins Peak Mine. This mine is located about three miles west of Durango, La Plata County, Colorado, near the top of a prominent castle-like mountain known as Perins Peak. There is but one coal bed of sufficient size to work at present within this unit, this ranging in thickness from 4 to 7 feet.

The mine was opened prior to 1906 at the outcrop, and developed by a tunnel in the coal bed 4500 feet long which was driven up the slope. The area tributary is small, as the coal measure truncates Perins Peak and comes to an outcrop entirely around it.

The mine had an average annual production for the ten years prior to 1922 of 52,000 tons. The tipple capacity was 500 tons, operating one shift.

The product was a fine grade of bituminous coal, but inordinately high in sulphur. The output was used on the narrow gauge division of the Rio Grande as well as for domestic purposes.

A typical analysis follows:

[fol. 1548] Proximate Analysis

Moisture	3.64%
Volatile	37.79
Fixed Carbon	53.35
Ash	5.22
	100.00%
Sulphur	1.36%
B. T. U.	13,595

Huerfano County, Colorado, Lands

Pinon and Gross Tract. The Pinon and Gross Tract owned by the Calumet Fuel Company consisted of 4240 acres situated on the Loma Branch of the Denver & Rio Grande Western Railroad extending north from Walsenburg, Colorado. No company operations were maintained in this tract. There were, however, three lease operations: Turner Mine, Gordon Mine and Vesta Mine.

There were no mining operations within the other tracts owned by the Calumet Fuel Company in Colorado and New Mexico.

Changes During Period December 31, 1921 thru December 31, 1936

Utah Fuel Company

Sunnyside Mine. During 1927 the Columbia Steel Company finished the installation of by-product coke ovens at the Columbia Steel plant at Ironton, Utah. In the meantime they had acquired the acreage of coking coal lying to the south of Sunnyside, and had developed a large mine therein. In January 1928 the Columbia Steel Company, through competitive bidding, took over the major coking contracts that formerly had been held by the Utah Fuel Company and supplied from the mines and coke ovens at Sunnyside. This directly deprived the Sunnyside Mine of market for around 200,000 tons of coal per year, the coal to coke ovens dropping to only 9,378 tons in 1936 and the total production of the mine from 478,802 tons in 1922 to 44,589 tons in 1936.

In 1929 the natural gas line was completed into Salt Lake City and surrounding territory. Previously gas had been manufactured from Sunnyside coal. This further reduced the demand on this mine. As a result, the No. 2 Mine area at Sunnyside was abandoned and rails and machinery removed. A large number of the coke ovens were torn down and the others not maintained. Most of the town was dismantled and houses were removed.

[fol. 1549] *Somerset Mine, Colorado.* Spontaneous fires continued to occur in the lower or Somerset seam until the entire east side and the lower part of the west side of the mine was under seal. Mining operations were transferred to the coal bed next above the Somerset measure and pro-

duction as of December 31, 1936 was coming entirely from this upper bed. Production has been well maintained at this mine, the output for 1936 being 210,970 tons as against 261,086 tons as of 1922. The low point of production was reached in 1933 when it dropped to 115,822 tons.

Castle Gate No. 1 Mine. In November, 1929, Castle Gate No. 1 Mine caught fire from an electric short circuit. This fire eventually resulted in the sealing of the entire mine and complete abandonment of operations therein. On account of the topography the pillar areas have caved to surface and it is improbable that this mine can ever be safely reopened and production therefrom established. The loss of this coal area was doubly important because the new Castle Gate tipple which had been completed but a short time before was so designed as to serve both the No. 1 and the No. 2 mines discharging onto the tipple at opposite ends. The failure of No. 1 Mine, unless the design of the tipple is now radically changed, reduces the tipple capacity by about fifty per cent.

Castle Gate No. 2 Mine. On March 8, 1924 a terrific explosion occurred in the Castle Gate No. 2 Mine, killing 172 men and causing a property loss of approximately $280,000.00, and a Workmen's Compensation expenditure of $600,000.00. Another explosion occurred in August, 1928 but as no men were in the mine there was no loss of life. The physical damage amounted to approximately $127,000.00. As a result of the original explosion, the workings down the pitch of the coal seam were sealed off and have so remained to the present time. The main-line mine tunnel was extended to the east and production is now coming from that territory.

Utah Mine. The Utah Mine was finally closed down and abandoned and the Utah Mine settlement dismantled February, 1925.

Winter Quarters Mine. In July, 1928 the entire Winter Quarters Mine and camp was abandoned. Material and machinery were taken from the mine and all surface equipment and buildings were removed.

On September 6, 1932 the charter of the Pleasant Valley Coal Company expired and all assets were deeded to the Utah Fuel Company.

[fol. 1550] In 1923 a new small shaft mine was opened at Castle Gate. This is producing coal from a coal bed above that worked in the Castle Gate No. 2 Mine. This

mine has not been operated steadily but has been used for supplementary supplies when market demanded.

As of December 31, 1936 the Utah Fuel Company had only the following operating mines:

(1) Somerset Mine, Colorado
(2) Sunnyside Mines, operating at 40% former capacity
(3) Castle Gate No. 2 Mine
(4) Clear Creek Mine, at 50 to 60 per cent capacity.

The shrinkage of total coal demand caused such an extent that the unit tax load reached prohibitive proportions, being in excess of twenty three cents per ton. Practically all of the coal land held had been acquired when the system of taxation in Utah imposed but a very slight burden on carrying charges. Under the circumstances then prevailing it was deemed wise to acquire a very large acreage even though the coal contained could not be marketed for a hundred years or more.

Developments in the Rocky Mountain coal fields, particularly in Utah and in western Colorado, have demonstrated that it is very questionable whether coal under overburden in excess of 1500 to 1800 feet can be mined at a profit over large areas. It was, therefore, deemed advisable to let those lands in which the coal was deeply buried or would be reached for many years to come, go for taxes, the company retaining the control of the surface.

In addition to the reasons above stated, the areas back from the outcrop which were within abandoned mine territory, were allowed to be tax delinquent and will revert to the county in which they are situated by June 1 of this year.

13,681.66 acres within or adjacent to the original mine units in Carbon County were allowed to become tax delinquent. The taxes on the 472.03 acres in the Morrison District, Sanpete County, were also allowed to become delinquent.

On December 5, 1932 the Utah Grazing Lands Company was incorporated under the laws of the State of Utah with authorized capital of $50,000.00, represented by 10,000 shares of common stock of $5.00 each. December 31, 1936 there was $38,000.00 capital stock outstanding.

The sole purpose of this company was to administer the [fol. 1551] surface of those lands within which the coal

right had been relinquished. As of December 31, 1936 these surface rights totaled 37,214.66 acres.

The Calumet Fuel Company

Perins Peak Mine. On December 8, 1926 the Perins Peak Mine, La Plata County, Colorado, became exhausted and was abandoned.

Huerfano County, Pinon and Gross Tract

Calumet No. 1 Mine. The Turner Mine which had been operating under lease in the Pinon and Gross Tract was acquired by the Calumet Fuel Company on September 1, 1922. This mine operated practically continuously until December 18, 1933, when it was closed down.

In the early twenties a lease had been granted on a tract of ground within the Pinon and Gross Tract adjoining the Turner Mine. This was known as the Brennan Mine. On April 26, 1924 the Brennan Mine was taken over by the Calumet Fuel Company and became the Calumet No. 2 Mine.

Of the 1367 acres owned in the Florida District, La Plata County, Colorado, 913.83 acres were sold. In the remaining acreage the coal rights were relinquished but surface retained, as was also the 601 acres composing the worked-out Perins tract. The 160 acres owned in San Juan County, New Mexico, were allowed to go for taxes.

As of December 31, 1936 the Calumet Fuel Company was operating one mine, the Calumet No. 2.

[fol. 1552] Utah Fuel Company Valuation

Depreciable Property

Herewith on page 52 is a tabulation of all of the depreciable property of the Utah Fuel Company attached and related to their mining operations. A careful comparison of depreciated values with a reasonable going concern value of the various units, showed that broadly speaking, the former portrayed, in my judgment, a reasonable going concern value for most of the items. The most important exception was that of housing. Through the State Tax Commission, the State of Utah has built up a careful and quite accurate system of valuing houses. This value more nearly represents the true present day worth of these structures than the depreciated totals on the books of the com-

pany. Each main item was considered separately, and where thought necessary, corrections were made. At the Somerset Mine of the Utah Fuel Company located in Gunnison County, Colorado, no such near exact system is in vogue. Adjustment of book values for the Somerset Camp were made to conform to those set up in Utah.

Value of Coal Lands

The value of coal lands in this case rests upon three factors: (1) Expectancy of output. (2) Rate of production and life of mine. (3) Reasonable profit per ton.

Regarding (1)

A study has been made of the past history of production of the State of Utah and the relation between Utah Fuel Company production and that of the entire Utah field. This original relation was greatly modified by the loss of the tonnage from the Sunnyside Mine. In my opinion, it is doubtful that any large portion of the coke business will ever be regained. The ratio of Utah Fuel production to the State production, less coking coal output, was deemed the proper basis of comparison. It is worthy of note that under the management of the last few years the Utah Fuel proportion has materially risen to an average of 20% for the last five years.

The output of coal in Utah has been seriously curtailed by three main factors: (1) The wealth of cheap oil from Texas and California; (2) The advent of natural gas in the more populace centers of the State, and (3) the general stagnation of business.

An examination of the history of production and a consideration of the probable modifications of the depressing [fol. 1553] factors leads me to the conclusion that by about 1945 the production of the State will be between 5,000,000 or 6,000,000 tons per year exclusive of that tonnage produced for coke-making purposes. If this assumption is correct, the Utah Fuel Company production in Utah should aggregate 1,200,000 tons per year. To this should be added such an annual output as is justified by the production record and coal reserves at the Somerset Mine in Colorado. This output I would place at 220,000 tons per year, making a total sustained average production through the forty years assumed life of the mine, of 1,420,000 tons. On this basis there would be produced 56,800,000 tons of coal.

Regarding (2)

In years past, many calculations as to mineable reserves in Utah Fuel ground have been made. These have all had to be revised downward as mining work progressed or diamond drill holes were sunk. During the past year, careful estimates were made of the mineable reserves in Colorado and Utah. These reserves have been tabulated in detail by the Engineering Department of the Utah Fuel Company and have been roughly checked by me. Inasmuch as they are greatly in excess of any reasonable requirements which are assumed for the forty-year period, their maximum amount is not of prime importance. The detail of these tabulations will be presented in the complete report but are here set down only in total.

Recoverable coal reserves in Utah, after allowance has been made for coal lands tax delinquent, 81,015,700 tons.

Recoverable tonnage Somerset District, Colorado, 40,400,000 tons.

Regarding (3)

In the early days of the Utah Fuel Company, it exercised a practical monopoly in the Utah field. The net income per ton was large, and contributing to that total in major extent was the Sunnyside Mine and the jointly operated coke ovens. From 1910 to 1920 many new mines were opened in Utah. War demand stimulated large mine developments until today capacity is probably 300% of demand. This has resulted in very sharp competition and the lowering of net realization.

In addition, a new taxing structure was created in 1919 resulting in the unit tax load being increased five to ten fold.

Another condition which has lowered realization in the last few years and will continue to do so is the development of automatic burning equipment using slack coal. This [fol. 1554] development has been in both the industrial and the domestic field. I have studied the yearly sums of net income per ton before charging depletion and depreciation, and it appears to me that the average net income per ton shown by operation from 1928 through 1936 gives a fair key as to what may be expected in the future. The average net income per ton, before depreciation and depletion, of the Utah Fuel Company for this priod was 33.7¢. Depreciation through the forty-year period used as life of the

future operation was taken as 16¢ per ton, which is ample for the tonnage involved. A depletion charge of 3¢ per ton was assumed.

Summary

Value coal per ton after depreciation and depletion	$ .147
Net Value, 56,800,000 tons at $0.147	8,349,600.00
Life of Operation, 40 years.	
Net return per year	208,740.00
Which on basis of 6% return on investment gives a total value of land and plant of	3,479,000.00
Less adjusted book value of plant	1,641,460.00
Value of Coal Lands	$1,837,540.00
Add—Assumed residual value of coal in land after completion of 40-year operation	50,000.00
Total	$1,887,540.00

For Calumet Fuel Company See Page 28.

[fol. 1555] The Calumet Fuel Company Valuation.

Depreciable Property

As in the case of the Utah Fuel Company, the book value of each item of Depreciable Property was considered separately and proper adjustment made.

Value of Coal Lands

It will be recalled that in the case of The Calumet Fuel Company, the Perins Peak property near Durango, Colorado, has been worked out and the mine abandoned. The New Mexico acreage had been allowed to revert to San Juan County, New Mexico for taxes and the coal rights surrendered on the Florida tract, and part of the surface sold. The Forbes tract had also been surrendered for taxes. On the Pinon and Gross Tract the original Turner Mine, afterwards known as Calumet No. 1 Mine, had been closed down and the area logically tributary to this opening, largely exhausted. The only company operation, therefore, as of December 31, 1936 was the Calumet No. 2 Mine adjoining the Calumet No. 1 on the south.

Here again the value of the coal land and the mining plant rests upon (1) expectancy of output, (2) rate of production and life of mine, and (3) reasonable profit per ton, or in lieu thereof a reasonable royalty value.

Concerning 1 and 2

Previously in this report it was stated that the workings of the Calumet No. 2 Mine were principally within the Cameron coal seal or bed. This is relatively thin, ranging from forty-four inches to around five feet. The quality of the coal, however, is excellent and the coal mines with a high percentage of lump and nut. Independent of railroad use, I believe there will be a steady demand for a material tonnage for domestic use both in Colorado and western Kansas and Nebraska.

I have assumed that an average output of 100,000 tons per year can be maintained during the life of the mine.

Developments within the Pinon and Gross tract and away from the outcrop have been disappointing. The acreage held by the Calumet Fuel Company has been explored by diamond drill. The various coal beds do not maintain their thickness away from the outcrop within the area owned. From these explorations, the best present day estimates assign only 2,000,000 tons of recoverable coal remaining. This would give a twenty-year life to the Calumet No. 2 [fol. 1556] operations. For the purpose of valuation this figure is used.

Concerning 3

What the unit profit might be from the Calumet No. 2 Mine is difficult to forecast because the operating history of this property on the Cameron seam is very limited. The Calumet No. 1 Mine was opened on the Walsenburg seam which had a thickness up to seven feet or more. This height, with the general mining conditions, allowed a relatively low production cost which was also made possible by a large and sustained railroad contract. Cost records of the Calumet No. 2 Mine taken by themselves preclude any profitable operation, but it must be borne in mind that the mine had just been reopened and re-equipped.

In view of these circumstances, I consider it more accurate in this case to calculate value of coal lands on a going royalty basis. The prevailing royalty in this district is 10¢

per ton and I have, therefore, fixed coal land value on the basis of present value of 2,000,000 tons recoverable over a twenty-year period at a 10¢ royalty. This value plus the present value of surface plant and equipment is herein considered as the total value of mining unit.

Summary

Recoverable Coal Reserves	2,000,000 tons
Royalty $0.10 per ton	
Annual Mine Production	100,000 tons
Life of Mine	20 years
Present value $0.10 royalty	
20 years at 6%	.057349
Total present value of coal lands	$114,698.00
Adjusted value of plant and equipment	172,385.00
Total Value	$287,083.00

[fol. 1557] Conclusions as to Value

In view of all the foregoing, I place the valuation of the Utah Fuel Company and its subsidiaries at $4,653,720.30 as per the following summary:

Going-Concern Valuation of the Utah Fuel Company (and Subsidiaries)

Capital Stock at December 31, 1936 is summarized as follows:

Lands:		
Utah Fuel Company	$1,899,281 00	
The Calumet Fuel Company	114,698 00	
Utah Grazing Lands Company	88,808 00	$2,102,787 00
Depreciable Property:		
Utah Fuel Company	$1,641,459 99	
The Calumet Fuel Company	172,384 99	
Wasatch Store Company	27 593 77	
Utah Fuel Stoker Sales Company	81 73	
Bamberger Coal Company	11,149 76	
Utah Fuel—Coal Company	422 13	$1,853,092 37
Other Assets—Consolidated:		
Cash	$338,082 49	
Accounts and Bills Receivable	299,016 81	
Inventories—Fuel, Supplies and Merchandise	216,350 48	
Securities Owned—U. S. Bonds	88,242 51	
Deferred Debit Items (Detail Attached)	10,871 68	
Cash Surrender Value of Life Insurance	5,397 75	$957,961 72
Total		$4,913,841 09
Less:		
Accounts Payable	$188,237 99	
Deferred Credit Items (Detail Attached)	329 03	
Accrued Expenses (Detail Attached)	20,084 00	
Reserve for Workmen's Compensation	7,870 48	
Excess of Par Value over Cost of Stock of Subsidiary Companies	43,599 29	$260,120 79
Total Going-Concern of the Utah Fuel Company (and Subsidiaries) Capital Stock at December 31, 1936, More Fully Detailed on Balance Sheets and Statements Herewith		$4,653,720 30

Respectfully submitted,

E. H. Burdick.

EXHIBIT No. 262

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

D. & R. G. W. Earnings Restated on Basis of 1940 Unit Costs

Line No.		1936	1937	1938	1939	1940	1936-1940 Total
1.	Gross Operating Revenue	$25,599,309	$26,781,922	$23,404,171	$25,073,040	$26,219,196	$127,077,708
2.	Thousand Gross Ton Miles in Freight Trains	6,074,599	6,450,663	5,411,271	5,970,436	6,530,335	30,437,304
3.	Freight Operating Expense, 1940					$16,306,894	
4.	Freight Operating Expense per Thousand Gross Ton Miles, 1940					$2.49709915	
5.	Restated Freight Operating Expense, at 1940 Average Cost per Thousand Gross Ton Miles	$15,168,876	$16,107,945	$13,512,480	$14,908,771	$16,306,894	$76,004,966
6.	Passenger Miles	97,230,219	105,171,173	91,158,727	101,113,103	99,887,601	494,560,823
7.	Passenger Operating Expense, 1940					$4,171,977	
8.	Passenger Operating Expense per Passenger Mile, 1940					$.04176672	
9.	Restated Passenger Operating Expense, at 1940 Average Cost per Passenger Mile	$4,060,987	$4,392,655	$3,807,401	$4,223,163	$4,171,977	$20,656,183
10.	Total Restated Operating Expense as above	$19,229,863	$20,500,600	$17,319,881	$19,131,934	$20,478,871	$96,661,149
11.	Net Operating Revenue, Restated	6,369,446	6,281,392	6,084,290	5,941,106	5,740,325	30,416,559
12.	Railway Tax Accruals	$2,247,427	$2,179,587	$2,623,602	$2,227,210	$2,246,045	$11,523,871
13.	Hire of Equipment, Net	582,641	460,067	551,183	597,580	430,843	2,622,314
14.	Joint Facility Rents, Net	260,468	299,958	315,778	318,772	302,279	1,497,255
15.	Other Income, Net (See Footnote)	Cr. 71,373	Cr. 77,047	Cr. 32,227	Cr. 36,843	Cr. 39,356	Cr. 256,846
16.	Total Deductions from Operating Revenue	$3,019,163	$2,862,565	$3,458,336	$3,106,719	$2,939,811	$15,386,954
17.	Available for Interest	$3,350,283	$3,418,827	$2,625,954	$2,834,387	$2,800,514	$15,029,965

NOTE:—Included in "Other Income, Net" are: Interest on $1,266,000, principal amount, D. & S. L. Income Bonds; and dividends on D. & S. L. W. RR. Co. and Denver Colorado Springs Pueblo Motor Way, on same return basis that appears in 1940 accounts. Deductions from "Other Income" include $100,000 for rental of Rio Grande Junction Railway and $146,036 for rental of D. & S. L. W. line. Deduction from net income for "Interest on Unfunded Debt" arbitrarily charged at $20,000 each year to cover only interest on deferred installments of assessments for publi improvements, etc.

Office of Trustees
Denver, Colorado
May 14, 1941

[fol. 1559]

EXHIBIT No. 263

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

D. & S. L. 1936–1940 Earnings Restated on Basis of 1940 Unit Costs

Line No.		1936	1937	1938	1939	1940	1936–1940 Total
1.	Gross Operating Revenue	$2,856,949	$2,806,256	$2,264,604	$2,290,818	$2,363,251	$12,581,878
2.	Thousand Gross Ton Miles in Freight Trains	505,954	542,142	405,806	410,321	452,549	2,316,772
3.	Freight Operating Expense, 1940	.....	.....	.....	.....	$1,549,348	.....
4.	Freight Operating Expense per Thousand Gross Ton Miles, 1940	.....	.....	.....	.....	$3.4236028	.....
5.	Restated Freight Operating Expense, at 1940 Average Cost per Thousand Gross Ton Miles	$1,732,186	$1,856,079	$1,389,319	$1,404,776	$1,549,348	$7,931,708
6.	Passenger Miles	5,036,077	4,424,579	4,341,241	3,411,776	3,522,910	20,736,583
7.	Passenger Operating Expense, 1940	.....	.....	.....	.....	$232,781	.....
8.	Passenger Operating Expense per Passenger Mile, 1940	.....	.....	.....	.....	$.06607634	.....
9.	Restated Passenger Operating Expense, at 1940 Average Cost per Passenger Mile	$332,766	$292,360	$286,853	$225,438	$232,781	$1,370,198
10.	Total Restated Operating Expense as above	$2,064,952	$2,148,439	$1,676,172	$1,630,214	$1,782,129	$9,301,906
11.	Net Operating Revenue, Restated	791,997	657,817	588,432	660,604	581,122	3,279,972
12.	Railway Tax Accruals	$270,548	$317,277	$353,311	$349,804	$203,193	$1,494,133
13.	Hire of Equipment, Net	97,324	109,625	48,048	50,230	21,084	326,311
14.	Joint Facility Rents, Net	Cr. 540,402	Cr. 572,959	Cr. 584,330	Cr. 601,064	Cr. 554,448	Cr.2,853,203
15.	Other Income, Net	Dr. 424,240	Dr. 448,367	Dr. 427,222	Dr. 407,520	Dr. 401,522	Dr.2,108,871
16.	Total Deductions from Operating Revenue	$251,710	$302,310	$244,251	$206,490	$71,351	$1,076,112
17.	Available for Interest	$540,287	$355,507	$344,181	$454,114	$509,771	$2,203,860

Office of Trustees
Denver, Colorado
May 21, 1941

[fol. 1560]

EXHIBIT No. 264

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees.

Combined D. & R. G. W. and D. & S. L. Earnings, 1936–1940, Restated on Basis of 1940 Unit Costs

	1936	1937	1938	1939	1940	1936-1940 Total
Income Available for Interest Restated on Basis of 1940 Unit Costs:						
D. & R. G. W. Railroad	$3,350,283	$3,418,827	$2,625,954	$2,834,387	$2,800,514	$15,029,965
D. & S. L. Railway	540,287	355,507	344,181	454,114	509,771	2,203,860
Total D. & R. G. W. and D. & S. L.	$3,890,570	$3,774,334	$2,970,135	$3,288,501	$3,310,285	$17,233,825

NOTE: No savings have been estimated from consolidation of the two properties.

Office of Trustees
Denver, Colorado
May 14, 1941

[fol. 1561]

EXHIBIT No. 268

The Denver and Rio Grande Western Railroad Company

Wilson McCarthy and Henry Swan, Trustees

Statement of Actual Expenditures for Road and Equipment
(Exclusive of Retirements)

November 1, 1935 to March 31, 1941

Class No.	Description	Nov. 1, 1935 to Dec. 31, 1935	1936	Nov. 1, 1935 to Dec. 31, 1936	1937	1938	1939	1940	Jan. 1, 1941 to Mar. 31, 1941	Jan. 1, 1937 to Mar. 31, 1941	Nov. 1, 1935 to Mar. 31, 1941
1	Widening Cuts and Fills Riprapping, Roadbed Protection, etc.	3,933	133,318	137,251	46,777	52,797	42,942	31,959	1,613	170,088	307,339
2	Ballasting	751	148,451	149,202	490,527	12,024*	176,034	96,561	.....	751,098	900,300
3	Rails and Other Track Material	17,265	309,523	326,788	430,496	160,557	523,105	302,937	2,043	1,419,138	1,745,926
4	Bridges, Trestles and Culverts	20,742	354,717	375,459	161,339	169,925	88,627	122,552	1,911	544,354	919,813
5	Tunnel and Subway Improvements	4,582	.....	4,582	4,818	.....	.....	.....	.....	4,818	9,400
10	Additional Yard Tracks, Sidings, and Industry Tracks	580	213,763	244,343	462,461	39,874	19,860	81,366	2,158	605,719	850,062
11	Changes of Grade or Alignment	.....	64,201	64,201	329,694	22,865	16,135	51,420*	.....	317,274	381,475
12	Signals and Interlocking Plants	.....	42,981	42,981	234,670	6,940	652*	37,407	1,116	279,481	322,462
13	Telegraph and Telephone Lines	.....	24,659	24,059	88,280	1,379	22,078	60,080	1,814	173,631	197,720
14	Roadway Machinery and Tools	.....	38,931	38,931	79,911	51,041	24,118	26,141	22,405	203,616	242,547
15	Section Bldgs & Other Roadway Property	.....	412	412	3,824	363	3,045	5,225	488	12,945	13,357
16	Fences & Snowsheds, Right-of-way, Snow or Sand Fences	.....	420	420	204	461	2,267*	2,892	.....	1,290	1,710
17	Frts and Pssr. Stations, Office, Bldgs. and Other Station-Facilities	10,447	63,249	73,696	108,225	31,074	64,217	50,909	21,109	275,534	349,230
18	Hotels and Restaurants	.....	.....	.....	34,476	.....	200	.....	.....	34,676	34,676
19	Fuel Stations and Appurtenances	.....	172	172	7,340	29	386	4,220	.....	11,975	12,147
20	Water Stations and Appurtenances	.....	24,455	24,455	60,451	6,008	19,968	35,387	4,455	126,269	150,724
21	Shop Buildings, Enginehouses and Appurtenances	.....	28,333	28,333	242,713	41,408	47,001	62,303	8,863	402,291	430,624
22	Shop Machinery and Tools	.....	75,571	75,571	136,621	178,348	63,294	83,085	4,664	480,012	561,583
23	Electric Power Plants, Substations, Trans. & Distr. Lines	.....	.....	.....	.....	.....	1,518	6,480*	7,285	2,323	2,323
27	Real Estate	2,500	2,500	5,000	.....	1	2	.....	.....	3	5,003
28	Public Improvements—Construction	.....	9,673	9,673	26,114	2,921	4,099	11,469	436	45,039	54,712
34	All Other Improvements	.....	.....	.....	294	.....	.....	.....	.....	294	294
35	Locomotives—Steam	.....	.....	.....	568,419	2,023,048	.....	.....	440	2,591,907	2,591,907
36	Locomotives—Other	.....	.....	.....	.....	.....	.....	.....	81,515	81,515	81,515
37	Freight Train Cars	.....	209,981	209,981	684,694	6,214	1,793,819	2,219,637	872,158	5,576,522	5,786,503
38	Passenger Train Cars	.....	204,809	204,809	108,851	373*	119,108	.....	9	227,595	432,404
39	Work Equipment	130	40,299	40,429	81,044	5,001	19,408	35,698	15,305	156,456	196,885
42	Miscellaneous Equipment	.....	264	264	4,208	3,888	3,919	6,725	2,374	21,114	21,378
43	Improvements to Existing Equipment	3,969	176,202	180,171	256,328	30,981	50,008	178,876	30,534	546,727	726,898
44	Const. of Extensions, Branches and Other New Lines	.....	.....	.....	.....	176,274	.....	2,945*	.....	173,329	173,329
	Total Road and Equipment	64,899	2,196,314	2,261,213	4,666,779	2,999,000	3,099,975	3,394,584	1,082,695	15,243,033	17,504,246
	Total Road & Structures (1–34 & 44)	60,800	1,564,759	1,625,559	2,963,235	930,241	1,113,713	953,648	80,360	6,041,197	7,666,756
	Total Equipment (35–43)	4,099	631,555	635,654	1,703,544	2,068,759	1,986,262	2,440,936	1,002,335	9,201,836	9,837,490

* Credit

[fol. 1562]

EXHIBIT No. 269

The Denver and Rio Grande Western Railroad Company

Wilson McCarthy and Henry Swan, Trustees

Statement of Actual Expenditures for Operating Expenses in Connection with Improvements

November 1, 1935 to March 31, 1941

Class No.	Description	Nov. 1, 1935 to Dec. 31, 1935	1936	Nov. 1, 1935 to Dec. 31, 1936	1937	1938	1939	1940	Jan. 1, 1941 to Mar. 31, 1941	Jan. 1, 1937 to Mar. 31, 1941	Nov. 1, 1935 to Mar. 31, 1941
	Widening Cuts and Fills, Riprapping, Roadbed										
1	Protection, etc.	2,141	7,306	9,447	3,770	11,746	2,971	5,346	18	23,851	33,298
2	Ballasting		60,021	60,021	174,731	2,682	68,853	82,085	334	328,685	388,706
3	Rails and Other Track Material	30,010	358,527	388,537	507,097	204,360	738,648	444,674	77,711	1,902,490	2,290,937
4	Bridges, Trestles and Culverts	18,079	225,658	243,737	164,893	110,891	98,822	120,792	1,641	497,039	740,776
10	Additional Nd. Tracks, Sidings and Industry Tracks		16,590	16,590	76,519	19,957	104,277	31,493	85	222,331	238,921
11	Changes of Grade or Alignment		78,276	78,276	200,807	9,291	4,691	127,182		341,924	420,197
12	Signals and Interlocking Plants		7,933	7,933	16,535	13,922	9,031	5,747	448	45,686	53,619
13	Telegraph and Telephone Lines				668	590	753	466		2,477	2,477
14	Roadway Machinery and Tools				10,444	12,671	21,348	7,241	304	52,008	52,008
15	Section Bldgs. & Other Rdwy. Property				262	157	247	1,578		2,244	2,244
16	Fences & Snowsheds—Right-of-way, Snow or Sand Fences						3,961	2*		3,959	3,959
17	Frt. & Pssr. Stations, Office Bldgs. and Other Station Facilities	2,309	19,561	21,870	9,373	29,005	53,646	21,714	12,716	126,544	148,414
18	Hotels and Restaurants				155					155	155
19	Fuel Stations and Appurtenances		100	100	1,928		17*	1,194		3,105	3,205
20	Water Stations and Appurtenances		26,613	26,613	70,521	5,061	11,146	22,247	5,665	114,640	141,253
21	Shop Buildings, Enginehouses and Appurtenances		10,383	10,383	258,713	4,972	6,423	88,081	6,317	264,506	274,889
22	Shop Machinery and Tools		25,414	25,414	15,627	30,904	13,713	32,389	2,506	95,139	120,553
23	Electric Power Plants, Substations, Trans. and Distr. Lines						1,818	7,767		9,585	9,585
28	Public Improvements—Construction				3,770	4,375	113*	2,592*		5,440	5,440
38	Passenger Train Cars					1,755				1,755	1,755
42	Miscellaneous Equipment					66	270			336	336
43	Improvements to Existing Equipment	6	72,211	72,217	135,420	151,712	43,408	50,941	25,380	406,861	479,078
	Total O. E. for Improvements	52,545	908,593	961,138	1,551,143	604,207	1,183,899	1,048,293	63,125	4,450,667	5,411,805
	Total Road & Structures (1-28)	52,539	836,382	888,921	1,415,723	450,674	1,140,221	997,352	37,745	4,041,715	4,930,636
	Total Equipment (38, 42 and 43)	6	72,211	72,217	135,420	153,533	43,678	50,941	25,380	408,952	481,169

* Credit

[fol. 1563] EXHIBIT No. 270

The Denver and Rio Grande Western Railroad Company

Wilson McCarthy and Henry Swan, Trustees

Principal Items of New Equipment Acquired, November 1, 1935-December 31, 1940

Purchased	Built
5 Passenger Locomotives	300 Stock Cars
10 Freight Locomotives	20 Cabooses
900 Box Cars	6 Miscellaneous
100 Auto Box Cars	
100 Ballast Cars	Rebuilt
50 Gondola Cars	58 Passenger Cars
7 Tank Cars	78 Auto Cars
14 Units Work Equipment	

Converted

77 Beet Cars
13 Flat Cars
2 Drovers Cars
133 Work and Outfit Cars

Denver, Colorado, May 17, 1941.

Vol. 1364

EXHIBIT No. 272

Witness: Thompson

The Denver and Rio Grande Western Railroad Company

Comparative Statement of Revenue Traffic Shown in Tons

Years 1920 to 1940, both Inclusive

	Revenue Tonnage Originating on Rio Grande						Revenue Tonnage Received from Connections						
	Terminating on Rio Grande	% of Total	Delivered to Connections	% of Total	Total	% of Total	Terminating on Rio Grande	% of Total	Delivered to Connections	% of Total	Total	% of Total	Total Revenue Traffic Carried
1940	3,158,420	33.74	2,212,889	23.68	5,371,309	57.38	1,630,191	17.41	2,360,510	25.21	3,990,701	42.62	9,362,010
1939	2,957,154	34.38	2,099,759	24.41	5,056,913	58.79	1,522,912	17.71	2,021,174	23.50	3,544,086	41.21	8,600,999
1938	2,678,675	33.74	2,102,447	26.48	4,781,422	60.22	1,379,244	17.37	1,779,417	22.41	3,158,661	39.78	7,940,083
1937	3,358,184	34.32	2,439,940	24.93	5,798,124	59.25	1,720,599	17.58	2,267,891	23.17	3,988,490	40.75	9,786,614
1936	2,975,116	33.39	2,314,611	25.97	5,289,727	59.36	1,517,293	17.03	2,104,913	23.62	3,622,206	40.64	8,911,933
1935	2,512,950	35.00	1,891,624	26.35	4,404,574	61.35	1,288,312	17.95	1,486,139	20.70	2,774,451	38.65	7,179,025
1934	2,448,544	32.48	1,777,505	28.19	3,826,049	60.67	1,108,569	17.58	1,371,740	21.75	2,480,309	39.33	6,306,358
1933	1,831,647	31.45	1,760,419	30.22	3,592,066	61.67	1,032,591	17.73	1,199,686	20.60	2,232,277	38.33	5,824,343
1932	1,667,771	28.96	1,848,232	31.52	3,516,003	60.18	1,205,724	20.56	1,111,364	18.96	2,317,088	39.52	5,863,091
1931	2,169,621	28.89	2,453,481	32.66	4,623,102	61.55	1,639,839	21.83	1,248,011	16.62	2,887,850	38.45	7,510,952
1930	3,029,437	30.80	3,235,436	32.90	6,264,873	63.70	1,974,813	20.08	1,594,638	16.22	3,569,451	36.30	9,834,324
1929	3,655,100	32.07	3,902,239	34.23	7,557,339	66.30	2,194,960	19.26	1,646,103	14.44	3,841,063	33.70	11,398,402
1928	3,546,476	33.14	3,605,803	33.69	7,152,279	66.83	2,080,307	19.44	1,469,472	13.73	3,549,779	33.17	10,702,058
1927	3,977,631	37.36	4,110,657	38.61	8,088,288	75.97	1,687,056	15.84	871,606	8.19	2,558,662	24.03	10,646,950
1926	4,202,062	38.82	4,072,450	37.62	8,274,512	76.44	1,779,426	16.44	770,559	7.12	2,549,985	23.56	10,824,497
1925	4,418,201	40.15	4,121,045	37.45	8,539,246	77.60	1,763,888	16.03	700,550	6.37	2,464,438	22.40	11,003,684
1924	4,340,811	41.38	4,043,255	38.55	8,384,066	79.93	1,523,830	14.53	581,544	5.54	2,105,374	20.07	10,489,440
1923	4,328,811	42.59	4,171,394	41.05	8,500,205	83.64	1,179,075	11.60	483,213	4.76	1,662,288	16.36	10,162,493
1922	3,736,549	38.74	4,464,024	46.29	8,200,573	85.03	1,012,139	10.50	431,385	4.47	1,443,524	14.97	9,644,097
1921	3,527,306	41.45	3,595,307	42.25	7,122,613	83.70	941,613	11.07	445,399	5.23	1,387,012	16.30	8,509,625
1920	4,526,712	37.88	5,313,211	44.45	9,839,923	82.33	1,281,614	10.72	830,716	6.95	2,112,330	17.67	11,952,253

Source: Years 1920–1939 from Exhibit #1 of Witness Thompson introduced at Court Hearing at Denver, Colorado, beginning July 29, 1940; year 1940 Form A Annual Report to Interstate Commerce Commission.

[fol. 1565]

EXHIBIT No. 273
Witness: Thompson

The Denver and Rio Grande Western Railroad Company

Cars and Revenue of Freight Traffic Interchanged with Eastern Connections at Denver and Pueblo Gateways Received from and Delivered to the Southern Pacific at Ogden, Union Pacific at Provo, Salt Lake City and Ogden, and Western Pacific at Salt Lake City, Years 1937–1938–1939 and 1940

	1940		1939		1938		1937	
Eastbound—Via Denver D&RGW Delivered to:	Cars	Thousand Dollars	Cars	Thousand Dollars	Cars	Thousand Dollars	Cars	Thousand Dollars
A. T. & S. F.	287	29	275	24	147	14	162	14
C. B. & Q.	13,476	1,225	10,412	940	8,387	778	10,116	872
C. R. I. & P.	7,616	692	6,731	633	5,603	529	7,042	612
Colo. & Sou.	279	25	221	20	222	19	210	18
Union Pacific	1,492	149	1,290	134	1,334	129	1,307	134
Total	23,150	2,120	18,929	1,751	15,693	1,469	18,837	1,650
Ratio to 1937		128.5%		106.1%		89.0%		100.0%
Westbound—Via Denver D&RGW Received from:								
A. T. & S. F.	77	9	47	5	20	2	33	4
C. B. & Q.	11,214	1,349	9,567	1,242	7,342	950	7,622	952
C. R. I. & P.	3,661	449	3,000	372	2,213	280	2,951	358
Colo. & Sou.	163	15	155	15	89	10	56	7
Union Pacific	941	130	908	136	624	88	758	96
Total	16,056	1,952	13,677	1,767	10,288	1,330	11,420	1,417
Ratio to 1937		137.8%		124.7%		93.5%		100.0%

[fol. 1566]

EXHIBIT No. 280

Received in evidence, June 3, 1941, Tr. 2377, M. S. Jameson

The Denver and Rio Grande Western Railroad Company
The Denver and Salt Lake Western Railroad Company

Status of Indebtedness Owing to RFC as of January 1, 1941

Date of Note	Date of Maturity	Principal Balance	Rate of Interest	Date from which interest Computed	Interest Accrued and unpaid as of 1/1/41
3/29/32	3/29/35	$250,000.00	6%	4/ 1/40	$11,301.36
6/27/32	3/29/35	750,000.00	6%	12/27/39	45,739.74
7/29/32	3/29/35	1,000,000.00	6%	1/29/40	55,561.63
1/12/33	1/12/36	105,500.00	5%	7/12/35	28,904.05
2/ 2/33	2/ 2/36	91,800.00	5%	8/ 2/35	24,886.65
2/25/33	2/25/36	81,500.00	5%	8/25/35	21,837.57
3/22/33	3/22/36	88,800.00	5%	9/22/35	23,452.96
4/20/33	4/20/36	219,700.00	5%	10/ 1/35	57,754.01
4/25/33	Demand	1,000,000.00	6%	4/25/40	71,260.30
5/20/33	5/20/36	286,800.00	5%	5/ 1/35	81,404.08
6/26/33	6/26/36	231,900.00	5%	6/ 1/35	64,836.68
6/30/33	Demand	950,000.00	6%	5/18/38	149,689.38
7/20/33	7/20/36	197,600.00	5%	7/ 1/35	54,434.71
8/22/33	8/22/36	281,800.00	5%	8/ 1/35	76,433.37
9/22/33	9/22/36	472,000.00	5%	9/ 1/35	126,017.55
10/20/33	10/20/36	357,700.00	5%	10/ 1/35	94,031.00
11/20/33	11/20/36	201,600.00	5%	5/ 1/35	57,221.23
12/21/33	12/21/36	189,800.00	5%	6/ 1/35	53,066.00
1/16/34	1/16/37	163,500.00	5%	7/ 1/35	45,040.96
3/21/34	3/21/37	85,800.00	5%	9/1 /35	22,907.45
2/21/34	2/21/37	91,200.00	5%	8/ 1/35	24,736.43
4/30/34	4/30/37	115,300.00	5%	10/ 1/35	30,309.71
6/11/34	6/11/37	165,700.00	5%	6/ 1/35	46,327.93
6/26/34	6/26/37	99,000.00	5%	6/ 1/33	27,679.31
8/ 6/34	8/ 6/37	57,500.00	5%	8/ 1/35	15,595.89
8/31/34	8/31/37	46,500.00	5%	8/ 1/35	12,612.41
12/19/34	Demand	3,110,850.00	5%	6/ 3/35	868,891.67
	Total	$10,691,850.00			$2,161,934.05

Source of and Payments Received Since Date of Bankruptcy and Applied in Reduction of Accrued and Unpaid Interest

Payment received upon release of 3651 shares Capital Stock of The Denver & Salt Lake Railway Company	$700,000.00
Interest received on $1,266,000 The Denver & Salt Lake Railway Company Income Mortgage Bonds	275,355.00
Cash Dividend received on Capital Stock Rio Grande Motor Way, Inc.	62.50
Total	$975,417.50

Since January 1, 1941, $50,640.00 additional has been received representing interest on $1,266,000 The Denver & Salt Lake Railway Company Income Mortgage Bonds. This amount has also been applied in reduction of accrued and unpaid interest.

[fols. 1567-1568] At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office in Washington, D. C., on the 8th Day of August, A. D. 1936.

Finance Docket No. 11002

Denver & Rio Grande Western Railroad Company
Reorganization

ORDER

It appearing, That the Bureau of Accounts of the Commission has prepared, by the direction of Division 4, a report dated July 29, 1936, on its investigation of the income accounts of The Denver and Rio Grande Western Railroad Company, debtor, and its subsidiaries, for the calendar years 1930 to 1934, inclusive, and that, pursuant to the provisions of Section 77 (c) (11) of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended, the Commission may direct said bureau to file such report in the proceeding pending before the Commission for the reorganization of said debtor, Finance Docket No. 11002;

It is ordered, That said report be filed in, and made a part of, the record in said proceeding.

By the Commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1569] INTERSTATE COMMERCE COMMISSION

Bureau of Accounts—D. C. 9550—X (h)

Finance Docket No. 11002

The Denver and Rio Grande Western Railroad Company

Accounting Investigation of Net Income for Years 1930-1934, Inclusive. Submitted July 29, 1936

Interstate Commerce Commission, Bureau of Accounts

Finance Docket No. 11002

The Denver and Rio Grande Western Railroad Company Reorganization

In the matter of The Denver and Rio Grande Western Railroad Company, Debtor. In the proceedings for the reorganization of a railroad.

Report concerning income of The Denver and Rio Grande Western Railroad Company and its subsidiaries, for the five years ended December 31, 1930, to December 31, 1934, inclusive.

Filed in these proceedings by direction of the Interstate Commerce Commission, Division 4, pursuant to paragraph (11) of subsection (c) of section 77 of the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States, as amended," August 6, 1936.

[fol. 1570] INTERSTATE COMMERCE COMMISSION

Bureau of Accounts

This bureau has investigated the income accounts of The Denver and Rio Grande Western Railroad Company and its subsidiaries, The Denver and Salt Lake Western Railroad Company, the Goshen Valley Railroad Company, and, the Rio Grande Junction Railway Company, as stated on their books of account for the five years ended December 31, 1930-1934 for the purpose of determining whether they have been maintained in conformity with the accounting regulations prescribed by the Commission.

In conducting the investigation the accounts were analyzed with a view to determining that no amounts were included

as a debit or credit to income, which properly should have been included in other accounts, and that no amounts properly includible in income accounts were omitted. If any such were found, exceptions were prepared setting forth in detail the particulars in which the accounting as performed was at variance with the Commission's accounting regulations and indicating the amount by which the account was under or overstated as the result of the improper accounting. The only accounting exceptions necessary were in connection with the accounts of the parent company, The Denver and Rio Grande Western Railroad Company. Such exceptions were discussed with the carrier's accounting officer, to whom copies of the exceptions were furnished. [fol. 1571] The carrier is therefore in possession of full information concerning all exceptions taken.

The Denver and Rio Grande Western Railroad Company is the operating carrier of the group and the following particulars affect only the accounts of that carrier.

The Commission, as provided in its accounting regulations, upon application supported by a proper showing that inclusion in the appropriate operating accounts of certain items would produce a distortive showing, has at times authorized the carrier to enter the amounts in profit and loss accounts direct without passing them through the designated income accounts. In order to reflect the income which would have been shown on the carrier's books if such special permission had not been granted, exceptions have been prepared which have the effect, for the purpose of this investigation, of including all income items in the income accounts.

The Commission's order prescribing the rates and accounting procedure which must be observed by carriers in accounting for depreciation of equipment, became effective January 1, 1935. This order as well as certain legislative enactments passed subsequent to December, 1934, will necessitate charges to income for depreciation and taxes in future years which were not required during the period covered by the bureau's investigation. The legislation referred to is the social security act approved August 14, 1935, and the railroad retirement act and related excise tax act approved [fol. 1572] August 29, 1935, which impose additional taxes upon carriers.

In order to indicate the effect on income had such order and legislation been in effect during the five years ended

December 31, 1934, exceptions have been prepared to show the amount of adjustments that would be required in the income accounts as stated for such period.

As these exceptions are intended as informative only, and merely as an indication of the possible effect such order and legislation would have had upon the prior years' income, in view of the difficulty and length of time required to determine with exactness the adjustments that would be necessary, the amounts thereof were estimated as indicated hereinafter.

During the five-year period, under the Commission's accounting regulations, the carrier determined from its own experience the rates at which charges were made to operating expenses for depreciation of the several classes of equipment. Such rates were determined for each unit of equipment and were applied until there had been charged to operating expenses and credited to the depreciation reserve an amount equal to the service loss (ledger value less salvage) after which no further depreciation charges were made. Upon retirement of the unit there was charged to the depreciation reserve the amount standing therein with respect to the unit, and if the equipment was retired before completion of its expected life, the difference between the [fol. 1573] service loss and the amount in the depreciation reserve was charged to operating expenses at the time of retirement.

Under the Commission's order, effective January 1, 1935, the rates to be charged for depreciation are prescribed by the Commission. Such charges are to be continued during the entire life of the equipment and at time of retirement of a unit the entire service loss is charged to the depreciation reserve.

In determining the adjustment that should be made for the purpose of arriving at the income for the five-year period ended December 31, 1934, had the depreciation order been effective during such period, the depreciation charges on equipment in service during the five-year period were computed on the basis of rates prescribed by the Commission. From the amounts of such recomputed depreciation were deducted the depreciation charges actually entered in the accounts plus charges made to operating expenses for service loss on retired equipment together with similar items included in profit and loss accounts by permission of

the Commission which have been restored to income through exceptions previously described.

Section 901, Title IX, of the social security act, approved August 14, 1935, effective January 1, 1936, provides for an excise tax at the rate of 1 per cent for the year 1936, 2 per cent for the year 1937 and 3 per cent thereafter, applied to the total wages payable. In view of the uncertainty of the effective date of the reorganization of the carrier, the maxi-
[fol. 1574] mum rate of 3 per cent was applied to the total pay rolls for each of the years 1930 to 1934 in computing the amount of tax which would have been chargeable to income if the social security act had been in effect during those years.

Under the retirement act approved June 27, 1934, the carrier set up charges for contributions to a retirement fund at the rate of 4 per cent of the compensation not in excess of $300 per month paid its employees. This act was held unconstitutional by the Supreme Court May 6, 1935, and a new act which was approved August 29, 1935 provided for the payment of a tax at the rate of 3½ per cent of the compensation not in excess of $300 per month paid its employees. The ratio of the aggregate of the amounts which the carrier had determined to be payable under the invalidated railroad retirement act to the total pay rolls of the periods to which the amounts payable applied was determined. This ratio was reduced one eighth to adjust for the difference between the rates of 4 per cent and 3½ per cent as provided in the respective acts. The reduced ratio so determined was applied to the total monthly pay rolls for the five-year period and from the result were deducted the amounts charged operating expenses for pensions during those five years. The results so determined are considered to be the additional amounts that would have been charged to income during that period had the present retirement act been then in effect.

The results of this Bureau's investigation of the carrier's
[fol. 1575] accounts are shown on the statement submitted herewith identified as "Schedule 1". The statement consists of a summary of the income accounts as stated on the carrier's books of account for each of the five years ended December 31, 1930-1934, total for the period and the yearly average.

The statement also shows the amounts of income available for the payment of interest as reflected by the carrier's

books; as corrected to eliminate accounting errors; as adjusted to include income items entered in profit and loss accounts by permission of the Commission; and as further adjusted to give retroactive effect to new legislation and revised accounting regulations. The statement further shows the correction necessary in the accounts for interest payments in order to state those accounts in conformity with the Commission's accounting regulations and to include therein amounts charged to profit and loss by permission of the Commission. Details of the adjustments are shown on a supplemental statement, identified as "Schedule 1-A".

With respect to the subsidiaries there are submitted herewith statements showing information relating thereto identified as follows:

Company	Schedule
The Denver and Salt Lake Western Railroad Company	2
Goshen Valley Railroad Company	3
The Rio Grande Junction Railway Company	4

(Here fololw 2 pasters, side folios 1576, 1577)

[fol. 1576]

SCHEDULE 1

Interstate Commerce Commission

Bureau of Accounts

The Denver and Rio Grande Western Railroad Company

Statement of net income, or deficit, for the five years from 1930 to 1934, inclusive

	Year 1930	1931	1932	1933	1934	Five year Total	Average per year
As stated on the carrier's books of account:							
Net railway operating income	$6,940,932 29	$5,137,991 16	$2,814,269 15	$3,357,643 36	$2,311,563 88	$20,562,409 84	$4,112,481 97
Other income	298,858 30	186,223 96	200,797 23	160,988 39	484,518 24	1,331,386 12	266,277 22
Total income	$7,239,800 59	$5,324,215 12	$3,015,066 38	$3,518,631 75	$2,796,082 12	$21,893,795 96	$4,378,759 19
Miscellaneous deductions from income	17,947 70	17,517 35	18,293 24	17,642 86	14,870 97	86,272 12	17,254 42
Income available for fixed charges	$7,221,852 89	$5,306,697 77	$2,996,773 14	$3,500,988 89	$2,781,211 15	$21,807,523 84	$4,361,504 77
Fixed charges other than interest	102,194 12	102,194 12	102,194 12	102,194 12	180,933 19	589,709 67	117,941 93
Income available for payment of interest	$7,119,658 77	$5,204,503 65	$2,894,579 02	$3,398,794 77	$2,600,277 96	$21,217,814 17	$4,243,562 84
Interest on funded debt	$5,384,335 83	$5,368,317 83	$5,324,008 84	$5,381,398 41	$5,394,588 87	$26,852,649 78	$5,370,529 96
Interest on unfunded debt	51,041 50	61,837 78	154,780 20	156,349 44	181,560 84	605,569 76	121,113 95
Total interest	$5,435,377 33	$5,430,155 61	$5,478,789 04	$5,537,747 85	$5,576,149 71	$27,458,219 54	$5,491,643 91
Total net income	$1,684,281 44	$225,651 96D	$2,584,210 02D	$2,138,953 08D	$2,975,871 75D	$6,240,305 37D	$1,248,081 07D
Income available for payment of interest:							
As shown by carrier's books of account	$7,119,658 77	$5,204,503 65	$2,894,579 02	$3,398,794 77	$2,600,277 96	$21,217,814 17	$4,243,562 84
After correcting accounting not in conformity with the Commission's accounting regulations	6,643,686 30	5,212,094 88	2,884,206 83	3,356,210 17	2,494,674 77	20,590,872 95	4,118,174 59
After adjustment to include income items entered in profit and loss account by permission of the Commission	6,643,686 30	5,212,094 88	2,884,206 83	3,356,210 17	2,118,353 44	20,214,551 62	4,042,910 32
After further adjustment to give retroactive effect to (a) new legislation and to (b) current regulations governing accounting for depreciation of equipment	5,731,177 57	4,532,363 10	2,370,290 19	2,883,485 04	2,088,477 58	17,606,193 48	3,521,238 70
Interest on unfunded debt after correcting accounting not in conformity with the Commission's accounting regulations	$51,041 50	$186,928 57	$185,313 55	$173,391 80	$187,191 81	$783,867 23	$156,773 45
Interest on unfunded debt after adjustment to include items entered in profit and loss account by permission of the Commission	51,041 50	186,928 57	185,313 55	173,391 80	370,070 47	966,745 89	193,349 18

D—Denotes deficit in income.

[fol. 1577]

Interstate Commerce Commission

Bureau of Accounts

The Denver and Rio Grande Western Railroad Company

Detail of modification of income resulting from investigation of the carrier's accounts

Schedule 1-A

	Primary account affected	All modifications have the effect of increasing income unless indicated by symbol "*" Year 1930	1931	1932	1933	1934
Net income available for payment of interest as stated on the carrier's books of account		$7,119,658.77	$5,204,503.65	$2,894,579.02	$3,398,794.77	$2,600,277.96
Modifications necessary to correct accounting not in conformity with the Commission's regulations:						
Exception No. 1—Service loss on property retired and replaced charged to profit and loss	531	334,972.47*	42,286.37*	421.06*	42,584.60*	86,875.73*
Exception No. 2—Interest received on tax refunds credited to profit and loss	515		49,877.60			
Exception No. 3—Profit derived from exchange of stock accounted for as dividend	513	16,000.00*				
Exception No. 4—Reparation claim payments charged to profit and loss	501					9,455.84*
Exception No. 5—Advance accounting for renewal of cross ties	531	125,000.00*				
Exception No. 6—Payment for pickup and delivery service charged to profit and loss	501					9,271.62*
Exception No. 7—Adjustment of accounts receivable through profit and loss instead of account originally credited	501			181.38*		
	504			1,206.00*		
	531			2,935.55*		
	536			52.00*		
Exception No. 8—Offset settlement applied to accounts previously charged instead of accounts receivable	501			1,019.47*		
	504			540.00*		
	507			640.25*		
	510			352.51*		
	531			3,023.97*		
Net income available for payment of interest after modification to correct accounting not in conformity with the Commission's accounting regulations		$6,643,686.30	$5,212,094.88	$2,884,206.83	$3,356,210.17	$2,494,674.77
Modifications to include items entered in profit and loss by permission of the Commission which in the absence of such permission would be includible in income accounts:						
Exception No. A-2—Retirement of obsolet equipment	531					376,321.33*
Net income available for payment of interest after adjustment to include income items entered in profit and loss by permission of the commission		$6,643,686.30	$5,212,094.88	$2,884,206.83	$3,356,210.17	$2,118,353.44
Modifications to give retroactive effect to new legislation and to current accounting regulations as indicated below:						
Exception No. A-4—Railroad retirement act and related excise tax act effective March 1, 1935	531	167,663.74	197,963.27	177,653.72	180,329.73	352,858.18
	532	504,988.50*	385,433.61*	289,755.93*	270,039.03*	319,054.82*
Exception No. A-5—Social Security Act effective January 1, 1936	532	444,401.73*	339,190.62*	254,992.02*	237,640.68*	280,775.73*
Exception No. A-1—Commission's order respecting accounting for equipment depreciation effective January 1, 1935	531	130,482.24*	153,070.82*	146,722.41*	145,375.15*	217,096.51
Net income available for payment of interest after further adjustment to give retroactive effect to new legislation and to current accounting regulations regarding equipment depreciation		$5,731,477.57	$4,532,363.10	$2,370,390.19	$2,883,485.04	$2,088,477.58
Interest on unfunded debt as stated on carrier's books of account		$51,041.50	$61,837.78	$154,780.20	$156,349.44	$181,560.84
Modifications necessary to correct accounting not in conformity with the Commission's regulations:						
Exception No. 2—Interest on additional tax assessments charged to profit and loss	547		81,673.94*			
Exception No. 4—Interest on reparation claims charged to profit and loss	547		43,416.85*	30,533.35*	17,042.36*	5,630.97*
Interest on unfunded debt after modification to correct accounting not in conformity with the Commission's accounting regulations		$51,041.50	$186,928.57	$185,313.55	$173,391.80	$187,191.81
Modifications to include items entered in profit and loss by permission of the Commission which in the absence of such permission would be includible in income accounts:						
Exception No. A-3—Interest paid on special assessments	547					182,878.66*
Interest on unfunded debt after adjustment to include income items entered in profit and loss by permission of the Commission		$51,041.50	$186,928.57	$185,313.55	$173,391.80	$370,070.47

[fol. 1578] Schedule 2

Interstate Commerce Commission

Bureau of Accounts

The Denver and Salt Lake Western Railroad Company

This company was incorporated for the purpose of constructing a line of railroad from Bond to Dotsero, Colorado. Construction was completed in June 1934 and the property was leased to The Denver and Rio Grande Western Railroad Company effective June 15, 1934.

The company has no net income, the lessee being required to assume all charges and pay rental equal to dividends on capital stock, which for the period from June 15 to December 31, 1934, amounted to $78,739.07. The dividend accrued on capital stock owned by the lessee and pledged as collateral for loans by the Reconstruction Finance Corporation to the lessee. Under the loan agreement, the payment of dividends on the pledged stock equal to interest on the loans unpaid is guaranteed jointly by the lessor and lessee.

[fol. 1579] Schedule 3

Interstate Commerce Commission

Bureau of Accounts

Goshen Valley Railroad Company

The property of this company is leased to The Denver and Rio Grande Western Railroad Company which owns all the company's outstanding capital stock.

No net income is shown by the company's books of account. For each of the five years 1930-1934 there was recorded $1 for rental received and a like amount for dividend appropriation.

[fol. 1580] Schedule 4

Interstate Commerce Commission

Bureau of Accounts

The Rio Grande Junction Railway Company

The property of this company is leased and forms that part of the main line of The Denver and Rio Grande West-

ern Railroad Company from Rifle Creek to Grand Junction, Colorado.

For each of the five years 1930-1934 the books of account show a rental income of $100,000 and a charge of the same amount for interest on funded debt. In addition to the rental and interest items for the five years there are shown the following items resulting in a net deficit of $3,232.17 for the five year period:

	(Account 515)	(Account 549)	(Account 551)	
Year	Interest Received	Expenses	Taxes*	Net Deficit
1930	$173.55	$ 3.62	$ 628.89	$ 458.96
1931	101.21	103.80	527.75	530.34
1932	61.54	102.50	647.50	688.46
1933	24.03	221.30	608.00	805.27
1934		105.06	644.08	749.14
	$360.33	$536.28	$3,056.22	$3,232.17

*Normal income tax, on interest on tax free bonds.

No adjustment of the foregoing is necessary as a result of investigation of the company's accounts.

[fol. 1580a] At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 9th day of January, A. D., 1937

Finance Docket No. 11002

The Denver and Rio Grande Western Railroad Company
Reorganization

ORDER

It appearing, That the Bureau of Accounts of the Commission has prepared, by the direction of Division 4, a report dated December 22, 1936, on its investigation of the income accounts of The Denver and Salt Lake Railway Company, one of the railroad companies embraced in the plan of consolidation and reorganization of The Denver and Rio Grande Western Railroad Company, debtor, for the calendar years 1930 to 1934, inclusive, and that, pursuant to the provisions of Section 77 (c) (11) of the act of

July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended, the Commission may direct said bureau to file such report in the proceeding pending before the Commission for the reorganization of the said debtor, Finance Docket No. 11002;

[fol. 1580b] *It is ordered*, That said report be filed in, and made a part of, the record in said proceeding.

By the Commission, division 4.

George B. McGinty, Secretary. (Seal.)

Interstate Commerce Commission

Bureau of Accounts—D.C. 9550-X(s)

Finance Docket No. 11002

The Denver and Rio Grande Western Railroad Company

Accounting Investigation of Net Income of

The Denver and Salt Lake Railway Company

for Years 1930-1934, inclusive

Submitted December 22, 1936

Interstate Commerce Commission

Bureau of Accounts

Finance Docket No. 11002

The Denver and Rio Grande Western Railroad Company
Reorganization

In the matter of The Denver and Rio Grande Western Railroad Company, Debtor. In proceedings for the reorganization of a railroad.

[fol. 1580c] Report concerning income of The Denver and Salt Lake Railway Company for the five years ended December 31, 1930, to December 31, 1934, inclusive.

Filed in these proceedings by direction of the Interstate Commerce Commission, Division 4, pursuant to paragraph (11) of subsection (c) of section 77 of the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States, as amended."

January 9, 1937.

Interstate Commerce Commission

Bureau of Accounts

This bureau has investigated the income accounts of The Denver and Salt Lake Railway Company as stated on the books of account for the five years ended December 31, 1930-1934, for the purpose of determining whether they have been maintained in conformity with the accounting regulations prescribed by the Commission.

In conducting the investigation the accounts were analyzed with a view to determining that no amounts were included as a debit or credit to income, which properly should have been included in other accounts, and that no amounts properly includible in income accounts were omitted. If any such were found, exceptions were prepared setting forth in detail the particulars in which the accounting as performed was at variance with the Commission's accounting regulations and indicating the amount by which [fol. 1580d] the account was under or overstated as the result of the improper accounting. Such exceptions have been presented to the carrier's accounting officer, who is therefore in possession of full information concerning all exceptions taken.

The Commission, as provided in its accounting regulations, upon application supported by a proper showing that inclusion in the appropriate operating accounts of certain items would produce a distortive showing, has at times authorized the carrier to enter the amounts in profit and loss accounts direct without passing them through the designated income accounts. In order to reflect the income which would have been shown on the carrier's books if such special permission had not been granted, exceptions have been prepared which have the effect, for the purpose of this investigation, of including all income items in the income accounts.

The Commission's order prescribing the rates and accounting procedure which must be observed by carriers in accounting for depreciation of equipment, became effective January 1, 1935. This order as well as certain legislative enactments passed subsequent to December, 1934, will necessitate charges to income for depreciation and taxes in future years which were not required during the period covered by the bureau's investigation. The legislation referred to

is the social security act approved August 14, 1935, and the railroad retirement act and related excise tax act approved August 29, 1935, which impose additional taxes upon carriers.

[fol. 1580e] In order to indicate the effect on income had such order and legislation been in effect during the five years ended December 31, 1934, exceptions have been prepared to show the amount of adjustments that would be required in the income accounts as stated for such period.

As these exceptions are intended as informative only, and merely as an indication of the possible effect such order and legislation would have had upon the prior years' income, in view of the difficulty and length of time required to determine with exactness the adjustments that would be necessary, the amounts thereof were estimated as indicated hereinafter.

During the five-year period, under the Commission's accounting regulations, the carrier determined from its own experience the rates at which charges were made to operating expenses for depreciation of the several classes of equipment. Such rates were determined for each unit of equipment and were applied until there had been charged to operating expenses and credited to the depreciation reserve an amount equal to the service loss (ledger value less salvage) after which no further depreciation charges were made. Upon retirement of the unit, there was charged to the depreciation reserve the amount standing therein with respect to the unit, and if the equipment was retired before completion of its expected life, the difference between the service loss and the amount in the depreciation reserve was [fol. 1580f] charged to operating expenses at the time of retirement.

Under the Commission's order, effective January 1, 1935, the rates to be charged for depreciation are prescribed by the Commission. Such charges are to be continued during the entire life of the equipment and at time of retirement of a unit the entire service loss is charged to the depreciation reserve.

In determining the adjustment that should be made for the purpose of arriving at the income for the five-year period ended December 31, 1934, had the depreciation order been effective during such period, the depreciation charges on equipment in service during the five-year period were

computed on the basis of rates prescribed by the Commission. From the amounts of such recomputed depreciation were deducted the depreciation charges actually entered in the accounts plus charges made to operating expenses for service loss on retired equipment together with similar items included in profit and loss accounts by permission of the Commission which have been restored to income through exceptions previously described.

Section 901, Title IX, of the social security act, approved August 14, 1935, effective January 1, 1936, provides for an excise tax at the rate of 1 per cent for the year 1936, 2 per cent for the year 1937 and 3 per cent thereafter, applied to the total wages payable. In view of the uncertainty of the effective date of the reorganization of the carrier, the maxi-[fol. 1580g] mum rate of 3 per cent was applied to the total pay rolls for each of the years 1930 to 1934, in computing the amount of tax which would have been chargeable to income if the social security act had been in effect during those years.

Under the retirement act approved June 27, 1934, the carrier set up charges for contributions to a retirement fund at the rate of 4 per cent of the compensation not in excess of $300 per month paid employees. This act was held unconstitutional by the Supreme Court May 6, 1935, and a new act which was approved August 29, 1935, provided for the payment of a tax at the rate of 3½ per cent of the compensation not in excess of $300 per month paid employees. The ratio of the aggregate of the amounts which the carriers had determined to be payable under the invalidated railroad retirement act to the total pay rolls of the periods to which the amounts payable applied was determined. This ratio was reduced one-eighth to adjust for the difference between the rates of 4 per cent and 3½ per cent as provided in the respective acts. The reduced ratio so determined was applied to the total monthly pay rolls for the five-year period and from the result were deducted the amounts charged operating expenses for pensions during those five years. The results so determined are considered to be the additional amounts that would have been charged to income during that period had the present retirement act been then in effect.

The results of this bureau's investigation of the carrier's [fol. 1580h] accounts are shown on the statement submitted

herewith identified as "Schedule 1". The statement consists of a summary of the income accounts as stated on the carrier's books of account for each of the five years ended December 31, 1930-1934, total for the period and the yearly average. The statement also shows the amounts of income available for the payment of interest as reflected by the carrier's books; as corrected to eliminate accounting errors; as adjusted to include income items entered in profit and loss accounts by permission of the Commission; and, as further adjusted to give retroactive effect to new legislation and revised accounting regulations, and the correction required in the accounts for interest payments in order to state those accounts in conformity with the Commission's accounting regulations. Details of the adjustments are shown on supplemental statement identified as "Schedule 1-A."

[fol. 1580-i]

Interstate Commerce Commission

Bureau of Accounts

The Denver and Salt Lake Railway Company

Statement of net income, or deficit, for the five years from 1930 to 1934, inclusive

Schedule 1

	Year					Five year total	Average per year
	1930	1931	1932	1933	1934		
As stated on the carrier's books of account:							
Net railway operating income	$1,123,752.78	$859,358.60	$812,424.67	$711,348.02	$913,122.28	$4,420,006.35	$884,001.27
Other income	140,428.13	386,680.65	161,712.09	133,979.54	99,829.99	922,630.40	184,526.08
Total income	$1,264,180.91	$1,246,039.25	$974,136.76	$845,327.56	$1,012,952.27	$5,342,636.75	$1,068,527.35
Miscellaneous deductions from income	11,220.57	9,315.32	10,664.23	9,542.99	7,618.67	48,361.78	9,672.36
Income available for fixed charges	$1,252,960.34	$1,236,723.93	$963,472.53	$835,784.57	$1,005,333.60	$5,294,274.97	$1,058,854.99
Fixed charges other than interest	411,631.93	400,747.94	397,019.86	403,278.43	402,743.46	2,015,421.62	403,084.32
Income available for payment of interest	$841,328.41	$835,975.99	$566,452.67	$432,506.14	$602,590.14	$3,278,853.35	$655,770.67
Interest on funded debt—(a) Fixed interest	$810,000.00	$810,000.00	$562,500.00	$425,000.00	$590,000.00	$3,197,500.00	$639,500.00
Interest on unfunded debt	1,081.05	572.12	6.51	3,359.82	96.54	5,116.04	1,023.21
Total interest	$811,081.05	$810,572.12	$562,506.51	$428,359.82	$590,096.54	$3,202,616.04	$640,523.21
Total net income	$30,247.36	$25,403.87	$3,946.16	$4,146.32	$12,493.60	$76,237.31	$15,247.46
Income available for payment of interest:							
As shown by carrier's books of account	$841,328.41	$835,975.99	$566,452.67	$432,506.14	$602,590.14	$3,278,853.35	$655,770.67
After correcting accounting not in conformity with the Commission's accounting regulations	858,594.69	838,949.01	551,281.24	433,530.66	535,443.60	3,217,799.20	643,559.84
After adjustment to include income items entered in profit and loss account by permission of the Commission	858,594.69	838,949.01	545,464.98	364,355.65	460,473.05	3,067,836.48	613,567.29
After further adjustment to give retroactive effect to (a) new legislation and to (b) current regulations governing accounting for depreciation of equipment	791,850.62	766,154.68	462,511.55	295,688.42	385,767.69	2,701,972.96	540,394.59
Interest on unfunded debt after adjustment to include income items entered in profit and loss account by permission of the Commission	$1,081.05	$24,500.43	$6.51	$3,359.82	$96.54	$29,044.35	$5,808.87

[fol. 1580-j]

Interstate Commerce Commission
Bureau of Accounts

The Denver and Salt Lake Railway Company
Detail of modification of income resulting from investigation of the carrier's account

Schedule 1-A

All modifications have the effect of increasing income unless indicated by symbol "*"

	Income account affected	Year 1930	1931	1932	1933	1934
Net income available for payment of interest as stated on the carrier's books of account		$841,328.41	$835,975.99	$566,452.67	$432,506.14	$602,590.14
Modifications necessary to correct accounting not in conformity with the Commission's regulations:						
Exception No. 1—Failure to account for estimated cost of bridges used in lieu of temporary trestles for purpose of filling	531	12,828.49	1,711.74	159.33	—	60,822.23*
Exception No. 2—Failure to inventory construction projects within reasonable time after completion thereof and make necessary adjustments	531	3,597.79	1,261.28	15,330.76**	1,024.52	5,484.31*
	504	840.00	—	—	—	840.00*
Net income available for payment of interest after modification to correct accounting not in conformity with the Commission's accounting regulations		$858,594.69	$838,949.01	$551,281.24	$433,530.66	$535,443.60
Modifications to include items entered in profit and loss by permission of the Commission which in the absence of such permission would be includible in income accounts:						
Exception No. A-1—Service loss on obsolete equipment retired	531	—	—	—	20,783.50*	19,192.44*
Exception No. A-2—Legal expenses in connection with Moffat Tunnel lease	531	—	—	—	17,500.00*	—
Exception No. A-3—Rental on Moffat Tunnel paid under judgment of District Court	542	—	—	5,817.46*	—	—
Exception No. A-8—Loss on timber lining of Moffat Tunnel retired	531	—	—	—	30,891.42*	55,778.11*
Net income available for payment of interest after adjustment to include income items entered in profit and loss by permission of the Commission		$858,594.69	$838,949.01	$545,464.08	$364,355.65	$460,473.05
Modifications to give retroactive effect to new legislation and to current accounting regulations as indicated below:						
Exception No. A-4—Railroad retirement act and related excise tax act effective March 1, 1936	532	46,363.56*	29,620.46*	24,241.28*	25,615.43*	26,869.48*
Exception No. A-6—Social security act effective January 1, 1936	532	41,136.48*	26,281.02*	21,508.29*	22,727.52*	23,840.19*
Exception No. A-7—Commission's order respecting equipment depreciation accounting effective January 1, 1935	531	20,755.97	16,892.85*	37,202.96*	20,324.28*	23,995.69
Net income available for payment of interest after further adjustment to give retroactive effect to new legislation and to current accounting regulations regarding equipment depreciation		$791,850.62	$766,154.68	$462,511.55	$295,688.42	$385,767.69
Interest on unfunded debt as stated on carrier's books of account		$1,081.05	$572.12	$6.51	$3,359.82	$96.54
Modifications to include items entered in profit and loss by permission of the Commission which in the absence of such permission would be includible in income accounts:						
Exception No. A-5—Interest on delayed payment of State taxes	547	—	23,928.31*	—	—	—
Interest on unfunded debt after adjustment to include income items entered in profit and loss by permission of the Commission		$1,081.05	$24,500.43	$6.51	$3,359.82	$96.54

[fol. 1581] At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 8th day of March, A. D. 1937.

Finance Docket No. 11002

The Denver and Rio Grande Western Railroad Company Reorganization

ORDER

It appearing, That the Bureau of Valuation of this Commission has prepared, by direction of Division 4, a report dated March 1, 1937, on its investigation of the elements of value, and related matters, of the properties of The Denver and Rio Grande Western Railroad Company, The Denver and Salt Lake Western Railroad Company, the Goshen Valley Railroad Company, The Rio Grande Junction Railway Company, The Denver and Salt Lake Railway Company, and the Moffat Tunnel Improvement District, as of December 31, 1935, and that pursuant to the provisions of section 77 (c) (11) of the Act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended, the Commission may direct said bureau to file such a report in the proceedings pending before it for the reorganization of said debtors;

[fol. 1582] *It is ordered*, That said report be filed in, and made a part of the record of this proceeding.

By the Commission, division 4.

George W. Laird, Acting Secretary. (Seal.)

[fol. 1583] Denver and Rio Grande Western Railroad Company, Denver and Salt Lake Western R. R. Co., Goshen Valley R. R. Co., Rio Grande Junction Ry. Co.

Denver and Salt Lake Railway Company, Moffat Tunnel Improvement District

Report of the Bureau of Valuation on the following matters as of December 31, 1935

Mileage.
Elements of value of property owned.
Elements of value of property underlying mortgages.

Investment in physical property and in securities of carrier and noncarrier corporations.
Summary of funded debt.
Capital stock and long-term debt outstanding.
Corporate history.
Development of fixed physical property.
History of corporate financing:

March 1, 1937.

[fol. 1584]

Denver and Rio Grande Western Railroad Company
Mileage as of December 31, 1935

	First main	Other main	Yard tracks and sidings	All tracks
Denver and Rio Grande Western R. R.				
Wholly owned and used:				

[fol. 1584]

Denver and Rio Grande Western Railroad Company

Mileage as of December 31, 1935

	First main	Other main	Yard tracks and sidings	All tracks
Denver and Rio Grande Western R. R.				
Wholly owned and used:				
Standard gauge	1,562.292	146.536	794.340	2,503.168
Narrow gauge	735.408	.....	85.263	820.671
Three rail	58.682	3.861	42.741	105.284
Four rail	.....	.....	0.580	0.580
Total wholly owned and used	2,356.382	150.397	922.924	3,429.703
Jointly owned and used:				
Standard gauge	1.472	0.506	21.588	23.566
Three rail	0.260	.....	0.278	0.538
Total jointly owned and used	1.732	0.506	21.866	24.104
Wholly used but not owned:				
Standard gauge	110.576	0.456	38.038	149.070
Narrow gauge	36.040	.....	6.026	42.066
Total wholly used but not owned	146.616	0.456	44.064	191.136
Jointly used but not owned:				
Standard gauge	0.716	.....	0.490	1.206
Narrow gauge	.....	.....	0.314	0.314
Total jointly used but not owned	0.716	.....	0.804	1.520
Total wholly owned	2,356.382	150.397	922.924	3,429.703
Total jointly owned	1.732	0.506	21.866	24.104
Total wholly used	2,502.998	150.853	966.988	3,620.839
Total jointly used	2.448	0.506	22.670	25.624

Note: In addition to the miles of track shown as wholly owned and used by the Denver and Rio Grande Western Railroad Company it also wholly owns and uses 1.501 miles of a third or single rail laid in the tracks of the New Mexico Central R. R. Co., over which it has trackage rights.

[fol. 1585]

Denver and Sale Lake Western R. R.				
Owned but not used	38.062	.....	14.619	52.681
Goshen Valley R. R.				
Owned but not used	9.272	0.456	1.738	11.466
Rio Grande Junction Ry.				
Owned but not used	62.075	.....	21.204	83.279
Denver and Salt Lake Ry.				
Wholly owned and used	220.355	.....	70.515	290.870
Wholly owned but not used	.....	.....	0.089	0.089
Wholly used but not owned	12.094	.....	4.734	16.828
Total owned	220.355	.....	70.604	290.959
Total used	232.449	.....	75.249	307.698
Moffat Tunnel Improvement Dist.				
Owned but not used	8.914	.....	1.972	10.886

[fol. 1586]

Denver and Rio Grande Western Railroad Company

Elements of Value as of December 31, 1935, of Property Owned

Denver and Rio Grande Western R. R.			
Original Cost			$142,800,512
Road		$104,308,393	
Equipment		38,492,119	
Cost of Reproduction New			168,729,747
Road		118,549,925	
Equipment		50,179,822	
Cost of Reproduction Less Depreciation			115,467,756
Road		94,535,747	
Equipment		20,932,009	
Value of Lands and Rights			5,428,159
Carrier		4,333,196	
Noncarrier		1,094,963	
Working Capital			2,473,400
Denver and Salt Lake Western R. R.			
Original Cost	Road		3,547,081
Cost of Reproduction New	Road		3,920,258
Cost of Reproduction Less Depreciation	Road		3,880,723
Value of Lands and Rights	Carrier		7,219
Goshen Valley R. R.			
Original Cost	Road		499,441
Cost of Reproduction New	Road		308,078
Cost of Reproduction Less Depreciation	Road		270,756
Value of Lands and Rights	Carrier		1,908

[fol. 1587]

Rio Grande Junction Ry.			
Original Cost	Road		$3,401,673
Cost of Reproduction New	Road		4,100,037
Cost of Reproduction Less Depreciation	Road		3,409,074
Value of Lands and Rights			60,330
Carrier		$54,006	
Noncarrier		6,324	
Denver and Salt Lake Ry.			
Original Cost			17,549,593
Road		14,502,554	
Equipment		3,047,039	
Cost of Reproduction New			19,934,420
Road		15,477,564	
Equipment		4,456,856	
Cost of Reproduction Less Depreciation			14,462,618
Road		13,204,327	
Equipment		1,258,291	
Value of Lands and Rights			91,854
Carrier		86,640	
Noncarrier		5,214	
Working Capital			287,000
Moffat Tunnel Improvement District (Owned by the State of Colorado)			
Original Cost			12,792,533
Cost of Reproduction New			8,813,873
Cost of Reproduction Less Depreciation			7,926,234
Value of Lands and Rights			596

[fol. 1588]

Denver and Rio Grande Western Railroad Company

Elements of Value as of December 31, 1935, of Property Owned

Original cost of property other than land has been determined in the following manner: For the Denver and Rio Grande Western Railroad and the Rio Grande Junction Railway by adding to the cost of reproduction new of road items as of date of basic valuation, based on 1910–1914 prices, and to the original cost of equipment (the Rio Grande Junction owns no equipment) as reported under Valuation Order No. 8, the cost of subsequent additions and retirements, as adjusted, ascertained from audited reports of the carriers under Valuation Order No. 3, form B. V. 588, through 1932 and from the carriers' records for 1933 to 1935, inclusive; for the Goshen Valley Railroad original cost as shown by the records; for the Denver and Salt Lake Western Railroad by adding to the original cost as of September 30, 1934, reported under Valuation Order No. 24, the cost of subsequent additions and retirements derived from the same sources as for the Denver and Rio Grande Western; for the Denver and Salt Lake Railway by adding to the cost of reproduction new of road items as of date of basic valuation, based on 1910–1914 prices, and to the original cost of equipment as reported under Valuation Order No. 8, the cost of subsequent additions and retirements, adjusted, ascertained from audited reports of the carrier under Valuation Order No. 3, form B. V. 588, through 1934 and from the carrier's records for 1935; and for the Moffat Tunnel Improvement District the original cost as shown by its records.

The amounts here reported for the Denver and Salt Lake Western Railroad, Goshen Valley Railroad and Moffat Tunnel Improvement District are the actual costs to December 31, 1935. For the Denver and Rio Grande Western Railroad the amount is 64.4 per cent actual and 35.6 per cent estimated, for the Rio Grande Junction Railway 68.3 per cent actual and 31.7 per cent estimated, and for the Denver and Salt Lake Railway 40.6 per cent actual and 59.4 per cent estimated.

Cost of reproduction new is based on revised inventories as of December 31, 1932, for the Denver and Rio Grande Western Railroad, Rio Grande Junction Railway and Goshen Valley Railroad, December 31, 1934 for the Denver and Salt Lake Railway and the Moffat Tunnel Improvement District and an inventory as of September 30, 1934, for the Denver

and Salt Lake Western Railroad with gross charges and credits for subsequent changes in property. Period prices were applied determined from consideration of records of prices and their individual trends prevailing in 1935 and during a period of time prior and subsequent thereto.

Cost of reproduction less depreciation has been determined in accordance with methods frequently explained in the Commission's printed valuation decisions.

[fol. 1589]

The value reported for lands is based on the application of unit values as of December 31, 1935, to detailed inventories as of December 31, 1932 for the Denver and Rio Grande Western Railroad, Rio Grande Junction Railway and Goshen Valley Railroad, December 31, 1934 for the Denver and Salt Lake Railway and Moffat Tunnel Improvement District, and an inventory of September 30, 1934 for the Denver and Salt Lake Western Railroad with adjustments estimated on the basis of cost for subsequent additions and retirements.

Working capital has been determined in accordance with the principles described in Northampton & B. R. Co., 159 I. C. C. 244, 263, under a simplified method applied in *Muskegon Ry. & Nav. Co.*, 45 Val. Rep. 797, and other valuation cases.

[fol. 1590] DEBTORS' EXHIBIT No. 1

The Denver and Rio Grande Western Railroad Company

Road Accounts			
Cost of Reproduction New (Units as of Dec. 31, 1932—Prices as of Dec. 31, 1938).			
Owned & Used			
Colorado	$86,575,726		
Utah	46,933,577		
New Mexico	5,553,539		
		139,062,842	
Jointly Owned & Used (D&RGW Portion)		116,777	
Jointly Owned & Wholly Used by D&RGW (D&RGW Portion)		38,510	
Unallocated (Acct. 37)		244,825	
Total		139,462,954	
Net Additions & Betterments to Road Accounts Jan. 1, 1933 to Dec. 31, 1938		927,028	
Total, Road Accounts, to Dec. 31, 1938		140,389,982	140,389,982
Lands			
Carrier	4,662,445		
Non Carrier	1,207,704		
		5,870,149	
Additions and Betterments to Land Acct. to Dec. 31, 1938	Cr.	24,390	
Total, Lands, to Dec. 31, 1938		5,845,759	5,845,759
Equipment			
Cost of Reproduction, Less Depreciation, as of Dec. 31, 1938			29,129,121
Total Cost of Reproduction Plus Value of Lands			$175,364,862

[fol. 1591] DEBTORS' EXHIBIT No. 5

Value of the Denver and Rio Grande Western Railroad Company, The Rio Grande Junction Railway Company, Goshen Valley Railroad Company, The Denver and Salt Lake Western Railroad Company

Cost of Reproduction New of Road Accounts, Cost of Reproduction Less Depreciation of Equipment, plus Value of Lands.		
The Denver and Rio Grande Western Railroad Company		$175,364,862
The Rio Grande Junction Railway Company		5,300,566
Goshen Valley Railroad Company		364,114
The Denver and Sale Lake Western Railroad Company		4,716,188
Total		$185,745,730
Additional Values		
Telegraph Lines	$300,000	
Water Rights	465,559	
Canon Rights	3,108,029	
Deficiency in Value of Narrow Gauge Equipment.	237,000	
		4,110,588
Additional Elements of Value		
Cost of Development of Property	9,000,000	
Going Concern Value	7,000,000	
Development of Business	550,000	16,550,000
Total Value as of December 31, 1938		$206,406,318

(Here follows 1 Photolithograph, side folio 1592)

In the matter of the Reorganization of
The Denver & Rio Grande Western Railroad Company, Debtor
Before the District Court of the United States
For the District of Colorado
Docket No. 8669

Exhibit 1
Witness

The Denver and Salt Lake Railway Company
Income Account
(000's Omitted)

	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
Operating Revenues													
Freight	$3,546	$ 3,540	$ 3,471	$ 2,836	$ 2,038	$ 1,711	$ 1,470	$ 1,455	$ 2,075	$ 2,653	$ 2,602	$ 2,078	$ 2,114
Passenger	305	255	199	150	96	65	48	42	49	91	85	76	67
Mail	112	83	202	107	108	102	101	72	58	67	70	70	68
Express	49	48	40	54	24	13	9	12	9	9	10	7	6
All Other	98	86	69	70	42	24	29	39	44	37	39	33	36
Total	4,110	4,012	3,981	3,197	2,302	1,915	1,657	1,620	2,235	2,857	2,806	2,264	2,291
Operating Expenses													
Maintenance of Way and Structures	1,109	824	660	625	358	247	215	94	261	438	461	272	350
Maintenance of Equipment	1,218	903	785	642	395	294	276	251	424	711	655	458	489
Traffic	22	23	27	27	23	20	18	19	23	28	29	29	31
Transportation	919	688	610	514	396	321	302	333	515	722	811	693	710
General	122	129	164	181	131	116	120	134	116	116	118	123	111
Transportation for Investment - Cr.	14	31	19	15	-	19	42	16	62	76	52	5	-
Total	3,376	2,536	2,227	1,975	1,303	979	889	815	1,277	1,939	2,022	1,570	1,691
Operating Ratio	82.14	63.21	55.94	61.78	56.60	51.12	53.65	50.31	57.14	67.87	72.06	69.32	73.81
Net Revenue from Railway Operations	734	1,476	1,754	1,222	999	936	768	805	958	918	784	694	600
Railway Tax Accrual	88	132	156	185	200	163	167	167	180	270	317	353	350
Railway Operating Income	646	1,344	1,598	1,037	799	773	601	638	778	648	467	341	250
Equipment Rents - Net - Cr.	34	85	81	87	60	39	110	Dr. 5	Dr. 36	Dr. 97	Dr. 110	Dr. 48	Dr. 50
Joint Facility Rents - Net - Cr.	-	-	-	-	-	-	-	280	519	540	573	584	601
Net Railway Operating Income	680	1,429	1,679	1,124	859	812	711	913	1,261	1,091	930	877	801
Other Income	89	125	142	140	387	162	134	99	66	24	15	10	8
Total Income	769	1,554	1,821	1,264	1,246	974	845	1,012	1,327	1,115	945	887	809
Fixed Charges	142	502	551	574	561	557	566	560	577	508	523	501	477
Times Fixed Charges Earned	5.42	3.10	3.30	2.20	2.22	1.75	1.49	1.81	2.30	2.19	1.81	1.77	1.69
Balance Available for Interest on Income Bonds	627	1,052	1,270	690	685	417	279	452	750	607	422	386	332
Interest Actually Paid on Income Bonds	495	660	660	660	660	413	275	440	660	605	413	385	330
Per Cent Actually Paid on Income Bonds	4⅞%	6%	6%	6%	6%	3¾%	2½%	4%	6%	5½%	3¾%	3½%	3%
Balance after Interest Actually Paid on Income Bonds	132	392	610	30	25	4	4	12	90	2	9	1	2
Balance after 6% Interest on Income Bonds:													
Amount	D 33	392	610	30	25	D 243	D 381	D 208	90	D 53	D 239	D 274	D 328
Per Share on 50,000 shares no par Capital Stock	D 0.66	7.84	12.20	.60	.50	D 4.86	D 7.62	D 4.16	1.80	D 1.06	D 4.78	D 5.48	D 6.56

[fol. 1593] GUARANT. TRUST EX. No. 2

H. H. Copeland and Son Freight Traffic Density Statements for the Years Indicated:

(a) 1935
(b) 1936
(c) 1937
(d) 1938
(e) 1939

COURT EXHIBIT No. 2a

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Net Ton Miles
Revenue and Company
Year Ended December 31, 1935

Reads East		Net Ton Miles		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Alamo, Colo.	Walsenburg, Colo.	231,650	3,100	344,250	113,800
Alamosa, Colo.	La Veta, Colo.	194,033	120,262	528,574	455,967
Alamosa, Colo.	Mears Jct., Colo.	39,851	38,986	83,270	82,149
Antonito, Colo.	Alamosa, Colo.	106,276	52,483	233,069	176,862
Aspen, Colo.	Glenwood Springs, Colo.	19,951	9,488	50,854	40,390
Baldwin, Colo.	Gunnison, Colo.	36,833	611	54,500	18,056
Bingham, Utah	Midvale, Utah*	187,548	474,290	433,387	720,161
Bon Carbo, Colo.	Trinidad, Colo.	123,294	1,706	179,941	58,412
Bond—Orestod, Colo.	Denver, Colo.**	532,282	220,603	1,240,756	795,061
Capers, Colo.	Mustang, Colo.	5,500	—	9,000	3,000
Chama, N. M.	Antonito, Colo.	85,206	41,746	182,571	138,476
Clear Creek, Utah	Colton, Utah	35,857	1,381	56,381	22,000
Colorado Springs, Colo.	Denver, Colo.	579,397	230,849	1,201,329	985,644
Colton, Utah	Heiper, Utah	1,226,667	2,370,944	3,659,333	4,603,333
Creede, Colo.	Alamosa, Colo.	44,551	13,493	105,275	73,493
Crested Butte, Colo.	Gunnison, Colo.	205,071	3,607	295,107	93,536
Delta, Colo.	Montrose, Colo.	64,455	110,682	214,727	214,318
Detsero, Colo.	Bond-Orestod, Colo.	572,816	355,000	1,381,789	1,025,842
Dotsero, Colo.	Minturn, Colo.	810,241	625,586	2,025,466	1,760,069

Durango, Colo.	Chama, N. M.	59,741	34,333	133,861	107,759
Farmington, N. M.	Durango, Colo.	29,122	5,367	59,041	34,755
Glenwood Springs, Colo.	Dotsero, Colo.	1,374,853	996,253	3,365,799	2,803,180
Grand Jct., Colo.	Delta, Colo.	98,549	270,529	328,451	523,922
Grand Jct., Colo.	Glenwood Springs, Colo.	1,368,044	992,538	3,350,422	2,792,689
Green River, Utah	Utaline, Colo.	1,175,528	865,958	2,885,375	2,394,986
Gunnison, Colo.	Mears Jct., Colo.	238,603	12,714	362,524	136,968
Heber, Utah	Provo, Utah	19,308	18,192	54,538	52,615
Helper, Utah	Mounds, Utah	1,184,913	1,106,957	3,011,000	2,748,913
Kenilworth Jct., Utah	Kenilworth, Utah	Yard Movement		Yard Movement	
La Veta, Colo.	Walsenburg, Colo.	231,375	135,500	595,750	498,188
Manitou, Colo	Colorado Springs, Colo.	Yard Movement		Yard Movement	
Marysvale, Utah	Thistle, Utah	45,000	44,477	114,174	113,561
Mears Jct., Colo.	Poncha Jct., Colo.	273,333	51,167	441,000	216,833
Midvale, Utah	Provo, Utah	1,204,088	2,397,265	3,639,412	4,612,824
Minturn, Colo.	Salida, Colo.	769,908	468,747	1,921,655	1,562,954
Monarch, Colo.	Poncha Jct., Colo.	212,467	1,267	301,467	87,400
Montrose, Colo.	Gunnison, Colo.	17,645	12,694	43,871	39,323
Mounds, Utah	Green River, Utah	1,161,188	855,396	2,850,188	2,365,771
Nephi, Utah	Ephraim, Utah	13,310	4,643	26,833	19,333
Ogden, Utah	Salt Lake City, Utah	517,667	369,128	1,272,333	823,795
Ouray, Colo.	Montrose, Colo.	19,194	8,583	38,889	27,667
Pagosa Springs, Colo.	Pagosa Jct., Colo.	1,484	935	2,645	1,839
Park City, Utah	Roper, Utah	87,758	18,970	140,455	71,970
Poncha Jct., Colo.	Salida, Colo.	499,000	54,200	762,800	313,400
Provo, Utah	Springville, Utah	1,327,800	2,716,800	4,013,200	5,227,800
Pueblo, Colo.	Colorado Springs, Colo.	852,455	277,364	1,767,477	1,184,159
Rouse, Colo.	Rouse Jct., Colo.	89,000	1,875	133,000	39,875
Salida, Colo.	Pueblo, Colo.	1,180,052	456,646	2,537,865	1,753,365
Salt Lake City, Utah	Midvale, Utah	1,244,750	2,547,125	3,762,375	4,901,125
Santa Fe, N. M.	Antonito, Colo.	5,384	11,760	20,128	26,264
Silver City, Utah	Springville, Utah	958,222	21,200	241,244	102,689
Silverton, Colo.	Durango, Colo.	9,733	6,778	20,400	17,533
Soldier Summit, Utah	Colton, Utah	1,191,000	2,488,714	3,603,286	4,811,857
Somerset, Colo.	Delta, Colo.	261,721	10,372	408,349	152,651

COURT EXHIBIT No. 2a

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Net Ton Miles
Revenue and Company
Year Ended December 31, 1935

Reads East		Net Ton Miles		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Southern Jct., Colo.	Pueblo, Colo.	709,750	124,500	1,308,000	679,000
Spring Canyon Jct., Utah	Rains, Utah	Yard Movement		Yard Movement	
Springville, Utah	Thistle, Utah	1,180,267	2,415,000	3,567,267	4,647,000
Sunnyside, Utah	Mounds, Utah	223,353	2,294	324,941	103,000
Thistle, Utah	Soldier Summit, Utah	1,180,233	2,490,500	3,567,267	4,792,200
Trinidad, Colo.	Walsenburg, Colo.	296,396	69,104	489,479	270,208
Tropic, Colo.	La Veta, Colo.[1]	8,000	—	12,000	4,000
Utaline, Colo.	Grand Jct., Colo.	1,153,588	849,824	2,831,559	2,350,324
Walsenburg, Colo.	Southern Jct., Colo.	764,978	122,826	1,388,674	722,109
Westcliffe, Colo.	Texas Creek, Colo.	3,160	1,800	9,360	7,720
Grand Total—Denver & Rio Grande Western R. R.		414,623	317,167	987,217	846,878

(*) Also Garfield to Welby.
(**) Over Denver & Salt Lake Ry.
(#) Service Discontinued February 14, 1935.
(1) Service Discontinued February 28, 1935.

Rio Grande Southern R. R.

Durango, Colo.	Ridgway, Colo.	18,502 Both Directions.

[fol. 1595] COURT EXHIBIT No. 2a

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy. from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Net Ton Miles
Revenue and Company
Year Ended December 31, 1935

Mortgage Liens	Net Ton Miles (Revenue and Company) Density	Net Ton Miles (Revenue and Company) Per Dollar of Funded Debt Outstanding Including Prior Liens
Denver & Rio Grande R.R.—1st Const Mtge. 4s & 4½s, 1936	492,026	18
Rio Grande Western Ry.—1st Trust Mtge. 4s, 1939	1,939,965	53
Rio Grande Western Ry.—1st Cons. Mtge. 4s, 1949	1,203,906	27
Denver & Rio Grande Western R.R.—Rfdg. & Improv. Mtge. Series "A" 6s, 1974 and "B" 5s, 1978	722,902	18*
Denver & Rio Grande Western R.R.—Gen. Mtge. 5s, 1955	722,902	14*
Rio Grande Junction Ry.—1st Mtge. 5s, 1939	2,395,561	74
Rio Grande Southern R.R.—1st Mtge. 4s, 1940	18,502	1

* Direct and Collateral Lien.

Operated Mileage Discontinued During Year—Excluded.

Years Ended December 31	Net Ton Miles (Rev. & Co.) Density	Ratio of Revenue Ton Miles To Rev. & Company Ton Miles	Average Revenue Per Net Ton Mile Rev. & Co. Freight (Mills)	Density Per Cent of 1935
1935	731,790	90.8%	9.7	100.0%
1934	689,906	91.2	9.7	94.3

[fol. 15961]

COURT EXHIBIT No. 2b
The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Net Ton Miles
Revenue and Company
Year Ended December 31, 1936

Reads East		Net Ton Miles		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Alamo, Colo.	Walsenburg, Colo.	263,500	3,750	390,650	127,350
Alamosa, Colo.	La Veta, Colo.	328,607	159,328	851,066	668,016
Alamosa, Colo.	Mears Jct., Colo.	52,338	42,919	106,203	94,814
Antonito, Colo.	Alamosa, Colo.	158,172	71,172	328,000	234,586
Aspen, Colo.	Glenwood Springs, Colo.	34,098	8,829	86,390	60,585
Baldwin, Colo.	Gunnison, Colo.	39,944	1,222	58,833	20,555
Bingham, Utah	Midvale, Utah*	205,871	481,935	482,484	745,452
Bon Carbo, Colo.	Trinidad, Colo.	148,824	1,059	218,176	70,235
Bond—Orestod, Colo.	Denver, Colo.**	772,031	326,198	1,776,710	1,162,702
Capers, Colo.	Mustang, Colo.	9,500	500	12,500	5,500
Chama, N. M.	Antonito, Colo.	120,683	53,730	241,952	168,698
Clear Creek, Utah	Colton, Utah	41,905	1,810	65,476	28,143
Colorado Springs, Colo.	Denver, Colo.	769,986	291,288	1,545,507	1,175,425
Colton, Utah	Helper, Utah	1,612,667	2,740,444	4,495,778	5,471,889
Creede, Colo.	Alamosa, Colo.	66,739	13,725	165,348	111,319
Crested Butte, Colo.	Gunnison, Colo.	276,500	5,750	397,714	126,929
Delta, Colo.	Montrose, Colo.	72,500	152,864	283,045	303,500
Dotsero, Colo.	Bond—Orestod, Colo.	825,737	499,395	1,937,842	1,435,132
Dotsero, Colo.	Minturn, Colo.	1,062,483	857,241	2,506,103	2,315,000
Durango, Colo.	Chama, N. M.	79,639	42,444	165,157	125,546
Farmington, N. M.	Durango, Colo.	32,429	6,735	65,163	39,592

Glenwood Springs, Colo.	Dotsero, Colo.	1,882,316	1,343,797	4,408,159	3,695,611
Grand Jct., Colo.	Delta, Colo.	110,902	373,667	432,902	741,843
Grand Jct., Colo.	Glenwood Springs, Colo.	1,871,467	1,339,211	4,383,389	3,681,600
Green River, Utah	Utaline, Utah-Colo.	1,590,236	1,093,000	3,719,500	3,067,167
Gunnison, Colo.	Mears Jct., Colo.	310,825	18,984	465,048	172,651
Heber, Utah	Provo, Utah	19,038	29,154	66,885	76,885
Helper, Utah	Mounds, Utah	1,586,087	1,364,739	3,833,870	3,451,391
Kenilworth Jct., Utah	Kenilworth, Utah	Yard Movement		Yard Movement	
La Veta, Colo.	Walsenburg, Colo.	374,125	185,063	933,813	734,438
Manitou, Colo.	Colorado Springs, Colo.	Yard Movement		Yard Movement	
Marysvale, Utah	Thistle, Utah	54,917	52,712	141,659	137,788
Mears Jct., Colo.	Poncha Jct., Colo.	359,167	61,500	564,833	264,833
Midvale, Utah	Provo, Utah	1,594,853	2,772,618	4,532,529	5,491,942
Midvale, Utah	Sand Pit, Utah	Yard Movement		Yard Movement	
Minturn, Colo.	Salida, Colo.	1,040,241	601,793	2,416,460	1,986,402
Monarch, Colo.	Poncha Jct., Colo.	157,600	667	220,067	63,133
Montrose, Colo.	Gunnison, Colo.	17,645	12,339	42,274	37,548
Mounds, Utah	Green River, Utah	1,570,833	1,079,667	3,674,146	3,029,750
Nephi, Utah	Ephraim, Utah	16,214	14,048	35,048	35,857
Ogden, Utah	Salt Lake City, Utah	668,179	412,846	1,547,744	945,487
Ojo, Colo.	La Veta, Colo.	7,000	—	10,500	3,833
Ouray, Colo.	Montrose, Colo.	24,500	12,056	53,250	41,333
Park City, Utah	Roper, Utah	90,455	20,242	152,242	82,515
Poncha Jct., Colo.	Salida, Colo.	583,600	64,200	811,200	339,000
Provo, Utah	Springville, Utah	1,758,600	3,142,400	4,998,000	6,224,200
Pueblo, Colo.	Colorado Springs, Colo.	1,122,841	349,955	2,273,864	1,412,159
Rouse, Colo.	Rouse Jct., Colo.	80,625	375	119,250	34,375
Salida, Colo.	Pueblo, Colo.	1,499,385	554,396	3,093,469	2,164,531
Salt Lake City, Utah	Midvale, Utah	1,648,750	2,948,875	4,685,625	5,835,125
Santa Fe, N. M.	Antonito, Colo.	5,952	11,168	34,320	39,512
Silver City, Utah	Springville, Utah	186,222	18,689	278,267	110,933
Silverton, Colo.	Durango, Colo.	15,111	9,178	30,822	25,022
Soldier Summit, Utah	Colton, Utah	1,571,000	2,876,286	4,430,714	5,717,714
Somerset, Colo.	Delta, Colo.	348,930	11,163	549,233	210,884
Southern Jct., Colo.	Pueblo, Colo.	959,750	179,000	1,805,750	965,250

COURT EXHIBIT No. 2b
The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Net Ton Miles
Revenue and Company
Year Ended December 31, 1936

Roads East		Net Ton Miles		Gross Ton Miles	
		East Density	West Density	East Density	West Density
		Yard Movement		Yard Movement	
Spring Canyon Jct., Utah	Rains, Utah	1,563,267	2,793,133	4,442,733	5,532,600
Springville, Utah	Thistle, Utah	257,412	3,882	373,412	119,353
Sunnyside, Utah	Mounds, Utah	1,563,267	2,880,467	4,442,700	5,705,467
Thistle, Utah	Soldier Summit, Utah	363,375	75,667	593,313	317,292
Trinidad, Colo.	Walsenburg, Colo.	1,590,559	1,072,618	3,650,118	3,009,941
Utaline, Utah—Colo.	Grand Jct., Colo.	1,049,348	181,435	1,935,804	1,036,217
Walsenburg, Colo.	Southern Jct., Colo.	4,640	2,080	12,200	9,520
Westcliffe, Colo.	Texas Creek, Colo.				
Grand Total—Denver & Rio Grande Western R. R.		557,182	395,772	−1,276,269	1,076,357

(*) Also Garfield to Welby.
(**) Denver & Salt Lake Ry.

Rio Grande Southern R. R.			
Durango, Colo.	Ridgway, Colo.	22,614	Both Directions.

[fol. 1597] COURT EXHIBIT No. 2b

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Net Ton Miles
Revenue and Company
Year Ended December 31, 1936

Mortgage Liens	Net Ton Miles (Revenue and Company) Density	Net Ton Miles (Revenue and Company) Per Dollar of Funded Debt Outstanding Including Prior Liens
Denver & Rio Grande R.R.—1st Cons. Mtge. 4s and 4½s, 1936	659,448	.24
Rio Grande Western Ry.—1st Trust Mtge. 4s, 1939	2,458,379	.66
Rio Grande Western Ry.—1st Cons. Mtge. 4s, 1949	1,514,407	.33
Denver & Rio Grande Western R.R.—Rfdg. & Improv. Mtge. Series "A" 6s, 1974 and "B" 5s, 1978	939,898	.23*
Denver & Rio Grande Western R.R.—Gen. Mtge. 5s, 1955	939,898	.17*
Rio Grande Junction Ry.—1st Mtge. 5s, 1939	3,203,540	1.00*
Rio Grande Southern R.R.—1st Mtge. 4s, 1940	22,614	1.

* Direct and collateral lien.

Years Ended December 31	Net Ton Miles (Rev. & Co.) Density	Ratio of Revenue Ton Miles To Rev. & Company Ton Miles	Average Revenue Per Net Ton-Mile Rev. & Co. Freight (Mills)	Density Per Cent of 1936
1936	952,954	89.2%	9.3	100.0%
1935	731,907	90.8	9.7	76.8

COURT EXHIBIT No. 2c

The Denver & Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Year ended December 31, 1937

Reads East		Net Ton Miles (Revenue & Company)		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Alamo, Colo.	Walsenburg, Colo.	256,900	4[illegible]000	383,550	134,250
Alamosa, Colo.	La Veta, Colo.	299,508	209,951	805,033	681,082
Alamosa, Colo.	Mears Jct., Colo.	32,851	37,797	70,203	74,649
Antonito, Colo.	Alamosa, Colo.	153,897	71,345	332,966	242,345
Aspen, Colo.	Glenwood Springs, Colo.	28,000	7,341	74,854	53,878
Baldwin, Colo.	Gunnison, Colo.	39,333	944	58,056	19,611
Bingham, Utah	Midvale, Utah	277,000	499,419	576,968	802,645
Bon Carbo, Colo.	Trinidad, Colo.	174,294	2,765	254,176	82,118
Bond-Orestod, Colo.	Denver, Colo.	781,824	375,359	1,781,397	1,259,977
Capers, Colo.	Mustang, Colo.	12,000	—	19,500	8,000
Chama, N. M.	Antonito, Colo.	129,222	58,206	263,889	189,746
Clear Creek, Utah	Colton, Utah	40,048	2,238	61,143	25,524
Colorado Springs, Colo.	Denver, Colo.	753,849	326,425	1,582,356	1,305,740
Colton, Utah	Helper, Utah	1,774,944	2,980,500	4,861,556	5,839,167
Creede, Colo.	Alamosa, Colo.	53,072	17,362	137,884	102,971
Crested Butte, Colo.	Gunnison, Colo.	325,071	5,679	468,679	146,429
Delta, Colo.	Montrose, Colo.	74,727	137,045	253,818	264,682
Dotsero, Colo.	Bond-Orestod, Colo.	846,105	551,526	1,943,237	1,509,500
Dotsero, Colo.	Minturn, Colo.	1,149,879	1,000,190	2,703,793	2,477,414
Durango, Colo.	Chama, N. M.	78,704	45,648	166,157	131,231
Farmington, N. M.	Durango, Colo.	25,490	7,204	52,265	34,102
Glenwood Springs, Colo.	Dotsero, Colo.	1,979,935	1,524,634	4,581,071	3,932,914

Grand Jct., Colo.	Delta, Colo.	114,275	335,059	388,157	646,941
Grand Jct., Colo.	Glenwood Springs, Colo.	1,969,578	1,520,289	4,558,478	3,918,456
Green River, Utah	Utaline, Utah.-Colo.	1,708,083	1,150,319	3,940,083	3,166,042
Gunnison, Colo.	Mears Jct., Colo.	367,444	26,317	550,889	206,302
Heber, Utah	Provo, Utah	19,923	31,731	73,269	83,692
Helper, Utah	Mounds, Utah	1,702,174	1,423,913	4,069,783	3,558,826
Kenilworth Jct., Utah	Kenilworth, Utah	Yard Movement		Yard Movement	
La Veta, Colo.	Walsenburg, Colo.	342,125	292,938	905,938	816,250
Manitou, Colo.	Colorado Springs, Colo.	Yard Movement		Yard Movement	
Marysvale, Utah	Thistle, Utah	54,121	52,833	143,742	144,129
Mears Jct., Colo.	Poncha Jct., Colo.	395,833	63,500	614,167	277,833
Midvale, Utah	Provo, Utah	1,762,206	3,053,647	4,908,088	5,940,735
Midvale, Utah	Sand Pit, Utah	Yard Movement		Yard Movement	
Minturn, Colo.	Salida, Colo.	1,200,667	718,517	2,694,276	2,131,701
Monarch, Colo.	Poncha Jct., Colo.	273,533	1,533	383,533	111,200
Montrose, Colo.	Gunnison, Colo.	19,274	16,048	48,839	46,084
Mounds, Utah	Green River, Utah	1,687,250	1,136,292	3,892,042	3,127,417
Nephi, Utah	Ephraim, Utah	13,452	8,762	28,357	28,333
Ogden, Utah	Salt Lake City, Utah	721,462	458,769	1,678,897	1,106,231
Ojo, Colo.	La Veta, Colo.	4,500	667	7,000	3,667
Ouray, Colo.	Montrose, Colo.	24,278	13,944	47,306	36,472
Park City, Utah	Roper, Utah	83,970	18,758	144,697	80,636
Poncha Jct., Colo.	Salida, Colo.	688,400	67,400	1,026,800	401,400
Provo, Utah	Springville, Utah	1,943,200	3,460,800	5,412,200	6,732,800
Pueblo, Colo.	Colorado Springs, Colo.	1,109,136	392,182	2,328,091	1,568,727
Rouse, Colo.	Mayne, Colo.	87,000	2,250	127,750	41,750
Salida, Colo.	Pueblo, Colo.	1,848,823	617,760	3,613,594	2,315,656
Salt Lake City, Utah	Midvale, Utah	1,821,750	3,244,500	5,073,875	6,312,000
Santa Fe, N. M.	Antonito, Colo.	4,240	8,520	32,440	36,736
Silver City, Utah	Springville, Utah	238,178	26,422	358,733	147,622
Silverton, Colo.	Durango, Colo.	23,733	11,289	44,200	32,867
Soldier Summit, Utah	Colton, Utah	1,735,143	3,128,143	4,800,857	6,106,286
Somerset, Colo.	Delta, Colo.	328,605	19,093	507,814	198,372
Southern Jct., Colo.	Pueblo, Colo.	956,500	229,750	1,792,000	976,500

COURT EXHIBIT No. 2c—Continued

The Denver & Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees.
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Year ended December 31, 1937

Reads East		Net Ton Miles (Revenue & Company)		Gross Ton Miles	
		East Density	West Density	East Density	West Density
		Yard Movement		Yard Movement	
Spring Canyon Jct., Utah	Rains, Utah	1,727,267	3,076,267	4,810,800	5,984,733
Springville, Utah	Thistle, Utah	283,118	3,471	411,647	132,471
Sunnyside, Utah	Mounds, Utah	1,727,267	3,172,400	4,810,800	6,171,733
Thistle, Utah	Soldier Summit, Utah	439,634	82,390	704,756	349,488
Trinidad, Colo.	Walsenburg, Colo.**	1,676,235	1,128,882	3,866,618	3,107,000
Utaline, Utah-Colo.	Grand Jct., Colo.	1,079,870	254,000	1,978,087	1,088,696
Walsenburg, Colo.	Southern Jct., Colo.	4,400	1,800	11,720	8,320
Westcliffe, Colo.	Texas Creek, Colo.				
Grand Total—Denver & Rio Grande Western R. R.		602,352	438,338	1,358,878	1,146,166

* Also Garfield to Welby.
\# Over Denver & Salt Lake Ry.
** Colorado & Southern Ry. Tracks.

[fol. 1599] COURT EXHIBIT No. 2c

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density.
Year Ended December 31, 1937

Mortgage Liens	Net Ton Miles (Revenue and Company) Density	Net Ton Miles (Revenue and Company) Per Dollar of Funded Debt Outstanding Including Prior Liens
Denver & Rio Grande Western R.R.—Trustees' Certificates Series "D" due Feb. 1, 1939 and Series "E" due Feb. 2, 1939	986,591	447
Denver & Rio Grande R.R.—1st Cons. Mtge. 4s & 4½s, 1936	736,216	25
Rio Grande Western Ry.—1st Trust Mtge. 4s, 1939	2,668,066	68
Rio Grande Western Ry.—1st Cons. Mtge. 4s, 1949	1,651,819	34
Denver & Rio Grande Western R.R.—Rfdg. & Improv. Mtge. Series "A" 6s, 1974 and "B" 5s, 1978	1,053,224	24*
Denver & Rio Grande Western R.R.—Gen. Mtge. 5s, 1955	1,053,224	18*
Rio Grande Junction Ry.—1st Mtge. 5s, 1939	3,485,369	108

* Direct and collateral lien.

Years Ended December 31	Net Ton Miles (Rev. & Co.) Density	Ratio of Revenue Ton Miles To Rev. & Company Ton Miles	Average Revenue Per Net Ton Mile Rev. & Co. Freight (Mills)	Density Per Cent of 1937
1937	1,040,690	87.6%	8.9	100.0%
1936	952,954	89.2	9.3	91.6

[fol. 1600]

COURT EXHIBIT No. 2d

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Year Ended December 31, 1938

Reads East		Net Ton Miles (Revenue & Company)		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Alamo, Colo.	Walsenburg, Colo.	185,800	3,150	282,300	99,450
Alamosa, Colo.	La Veta, Colo.	241,213	170,393	634,852	564,262
Alamosa, Colo.	Mears Jct., Colo.	13,824	34,297	36,419	59,878
Antonito, Colo.	Alamosa, Colo.	136,172	55,207	289,897	205,345
Aspen, Colo.	Glenwood Springs, Colo.	23,854	9,341	68,049	54,293
Baldwin, Colo.	Gunnison, Colo.	35,444	944	51,722	17,944
Bingham, Utah	Midvale, Utah	258,452	516,677	540,516	800,355
Bon Carbo, Colo.	Trinidad, Colo.	130,529	2,235	191,647	62,353
Bond—Orestod, Colo.	Denver, Colo.	620,718	361,733	1,537,321	1,127,672
Capers, Colo.	Mustang, Colo.	2,500	—	4,500	2,000
Chama, N. M.	Antonito, Colo.	115,206	41,714	230,968	156,937
Clear Creek, Utah	Colton, Utah	63,667	2,429	98,524	37,048
Colorado Springs, Colo.	Denver, Colo.	607,753	262,836	1,306,027	1,093,795
Colton, Utah	Helper, Utah	1,392,333	2,661,500	4,135,167	5,206,611
Creede, Colo.	Alamosa, Colo.	30,333	17,420	92,246	79,797
Crested Butte, Colo.	Gunnison, Colo.	201,071	3,286	286,464	89,036
Delta, Colo.	Montrose, Colo.	64,773	126,682	242,273	249,045
Dotsero, Colo.	Bond—Orestod, Colo.	677,974	495,605	1,676,079	1,304,026
Dotsero, Colo.	Minturn, Colo.	956,793	647,328	2,329,172	1,950,534
Durango, Colo.	Chama, N. M.	73,574	31,481	147,611	107,148
Farmington, N. M.	Durango, Colo.	20,551	5,122	43,408	28,816

Glenwood Springs, Colo.	Dotsero, Colo.	1,594,571	1,476,883	3,895,672	3,287,701
Grand Jct., Colo.	Delta, Colo.	99,059	309,686	370,529	608,804
Grand Jct., Colo.	Glenwood Springs, Colo.	1,587,222	1,169,911	3,877,378	3,271,789
Green River, Utah	Utahne, Utah-Colo.	1,341,236	1,039,903	3,304,278	2,846,819
Gunnison, Colo.	Mears Jct., Colo.	230,730	19,571	352,556	139,032
Heber, Utah	Provo, Utah	17,115	32,000	67,115	81,962
Helper, Utah	Mounds, Utah	1,339,000	1,311,391	3,427,522	3,235,087
Kenilworth Jct., Utah	Kenilworth, Utah	Yard Movement		Yard Movement	
La Veta, Colo.	Walsenburg, Colo.	273,063	177,500	696,813	599,063
Manitou, Colo.	Colorado Springs, Colo.	Yard Movement		Yard Movement	
Marysvale, Utah	Thistle, Utah	55,553	51,250	145,879	140,636
Mears Jct., Colo.	Poncha Jct., Colo.	241,667	53,333	384,500	196,833
Midvale, Utah	Provo, Utah	1,371,618	2,669,441	4,166,118	5,200,853
Midvale, Utah	Sand Pit, Utah	Yard Movement		Yard Movement	
Minturn, Colo.	Salida, Colo.	882,977	452,989	2,142,885	1,699,897
Monarch, Colo.	Poncha Jct., Colo.	112,133	267	157,933	46,867
Montrose, Colo.	Gunnison, Colo.	17,516	12,306	46,161	40,226
Mounds, Utah	Green River, Utah	1,324,875	1,027,208	3,263,979	2,812,104
Nephi, Utah	Ephraim, Utah	13,238	9,405	27,667	28,738
Ogden, Utah	Salt Lake City, Utah	603,256	420,436	1,461,256	995,000
Ojo, Colo.	La Veta, Colo.	5,833	—	8,667	2,500
Ouray, Colo.	Montrose, Colo.	28,972	12,009	56,278	37,389
Park City, Utah	Roper, Utah	70,424	10,212	121,667	61,121
Poncha Jct., Colo.	Salida, Colo.	365,600	55,800	561,000	252,260
Provo, Utah	Springville, Utah	1,512,600	3,025,400	4,594,000	5,894,400
Pueblo, Colo.	Colorado Springs, Colo.	894,182	315,773	1,921,500	1,314,114
Rouse, Colo.	Mayne, Colo.	44,000	500	66,500	23,500
Salida, Colo.	Pueblo, Colo.	1,183,260	453,927	2,607,281	1,857,635
Salt Lake City, Utah	Midvale, Utah	1,418,000	2,836,250	4,306,875	5,525,875
Santa Fe, N. M.	Antonito, Colo.	2,448	9,640	25,808	32,896
Silver City, Utah	Springville, Utah	215,511	23,689	326,378	135,000
Silverton, Colo.	Durango, Colo.	35,956	8,133	59,333	31,022
Soldier Summit, Utah	Colton, Utah	1,329,143	2,792,857	4,037,286	5,429,857
Somerset, Colo.	Delta, Colo.	301,047	11,209	477,488	186,535
Southern Jct., Colo.	Pueblo, Colo.	716,000	164,250	1,342,750	765,000

COURT EXHIBIT No. 2d—Continued

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Year Ended December 31, 1938

Reads East		Net Ton Miles (Revenue & Company)		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Spring Canyon Jct., Utah	Rains, Utah	Yard Movement		Yard Movement	
Springville, Utah	Thistle, Utah	1,344,467	2,689,200	4,083,533	5,239,400
Sunnyside, Utah	Mounds, Utah	296,588	4,529	430,235	144,882
Thistle, Utah	Soldier Summit, Utah	1,344,433	2,773,233	4,083,533	5,463,133
Trinidad, Colo.	Walsenburg, Colo.**	274,341	59,366	449,439	244,049
Utaline, Utah-Colo.	Grand Jct., Colo.	1,316,235	1,020,500	3,242,647	2,793,706
Walsenburg, Colo.	Southern Jct., Colo.	762,935	160,478	1,410,457	815,326
Grand Total		464,940	368,253	1,122,843	985,433

(*) Also Garfield to Welby.
(#) Over Denver & Salt Lake Ry.
(##) Dotsero Cutoff.
(**) C. & S. Ry. Tracks.

[fol. 1601] COURT EXHIBIT No. 2d

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Year Ended December 31, 1938

	Net Ton Miles (Revenue and Company) Density	Net Ton Miles (Revenue and Company) Per Dollar of Funded Debt Outstanding Including Prior Liens
Denver & Rio Grande Western R.R.—Trustees' Certificates Series "G" 3½s, 1942	785,213	356
Denver & Rio Grande R.R.—1st Cons. Mtge. 4's, & 4½'s, 1936	546,626	18
Rio Grande Western Ry.—1st Trust Mtge. 4's, 1939	2,250,202	57
Rio Grande Western Ry.—1st Cons. Mtge. 4's, 1949	1,400,716	29
Denver & Rio Grande Western R.R.—Refdg. & Improv. Mtge. Series "A" 6's, 1974 and "B" 5's, 1978	837,705	19*
Denver & Rio Grande Western R.R.—Gen. Mtge. 5's, 1955	837,705	14*
Rio Grande Junction Ry.—1st Mtge. 5's, 1939	2,753,580	86

* Direct and Collateral Lien.

Years Ended December 31	Net Ton Miles (Rev. & Co.) Density	Ratio of Revenue Ton Miles To Rev. & Company Ton Miles	Average Revenue Per Net Ton Mile Rev. & Co. Freight (Mills)	Density Per Cent of 1938
1938	833,193	92.8%	9.7	100.0%
1937	1,040,690	87.6	8.9	124.9

[fol. 1602]

COURT EXHIBIT No. 2e

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver and Rio Grande Western Railroad
Freight Traffic Density
Year Ended December 31, 1939

Reads East		Net Ton Miles (Revenue & Company)		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Alamo, Colo.	Walsenburg, Colo.	218,750	3,750	324,250	109,650
Alamosa, Colo.	La Veta, Colo.	217,803	151,016	622,754	559,131
Alamosa, Colo.	Mears Jct., Colo.	10,216	29,986	32,054	51,973
Antonito, Colo.	Alamosa, Colo.	133,310	59,448	282,034	202,976
Aspen, Colo.	Glenwood Springs, Colo.	25,732	10,098	68,634	52,220
Baldwin, Colo.	Gunnison, Colo.	26,056	944	38,722	13,667
Bingham, Utah	Midvale, Utah	294,097	513,871	610,452	821,419
Bon Carbo, Colo.	Trinidad, Colo.	150,706	2,000	220,471	71,471
Bond-Orestod, Colo.	Denver, Colo.*	718,214	431,321	1,756,023	1,304,519
Capers, Colo.	Mustang, Colo.	8,000	—	11,500	5,500
Chama, N. M.	Antonito, Colo.	108,651	43,238	220,032	154,413
Clear Creek, Utah	Colton, Utah	49,810	3,476	75,619	29,714
Colorado Springs, Colo.	Denver, Colo.	663,479	280,411	1,403,178	1,178,151
Colton, Utah	Helper, Utah	1,667,667	2,912,111	4,663,278	5,806,889
Creede, Colo.	Alamosa, Colo.	34,841	17,420	97,406	81,246
Crested Butte, Colo.	Gunnison, Colo.	221,143	2,357	314,357	96,286
Delta, Colo.	Montrose, Colo.	60,955	131,091	228,000	246,136
Dotsero, Colo.	Bond—Orestod, Colo.**	779,263	540,184	1,900,026	1,459,868
Dotsero, Colo.	Minturn, Colo.	1,034,414	760,103	2,431,845	2,203,724
Durango, Colo.	Chama, N. M.	52,574	30,593	115,574	92,472
Farmington, N. M.	Durango, Colo.	20,653	5,122	44,020	27,959

Glenwood Springs, Colo.	Dotsero, Colo.	1,806,747	1,306,603	4,288,734	3,659,169
Grand Jct., Colo.	Delta, Colo.	93,196	320,471	348,667	601,647
Grand Jct., Colo.	Glenwood Springs, Colo.	1,796,800	1,299,789	4,264,411	3,642,511
Green River, Utah	Utaline, Utah-Colo.	1,572,611	1,198,167	3,741,681	3,265,347
Gunnison, Colo.	Mears Jct., Colo.	242,889	11,746	368,270	133,984
Heber, Utah	Provo, Utah	15,615	85,846	88,731	159,115
Helper, Utah	Mounds, Utah	1,567,696	1,503,304	3,894,826	3,693,826
Kenilworth Jct., Utah	Kenilworth, Utah	Yard Movement		Yard Movement	
La Veta, Colo.	Walsenburg, Colo.	241,458	164,688	678,563	597,750
Marysvale, Utah	Thistle, Utah	53,121	50,212	137,871	136,902
Mears Jct., Colo.	Poncha Jct., Colo.	250,767	41,333	395,666	183,833
Midvale, Utah	Provo, Utah	1,660,676	2,873,265	4,697,412	5,743,000
Midvale, Utah	Sand Pit, Utah	Yard Movement		Yard Movement	
Minturn, Colo.	Salida, Colo.	982,356	481,287	2,249,667	1,818,460
Monarch, Colo.	Poncha Jct., Colo.	233,267	2,000	331,800	96,733
Montrose, Colo.	Gunnison, Colo.	20,484	10,242	48,581	37,871
Mounds, Utah	Green River, Utah	1,553,438	1,183,563	3,696,042	3,226,021
Nephi, Utah	Ephraim, Utah	11,833	9,119	24,762	27,000
Ogden, Utah	Salt Lake City, Utah	710,385	484,128	1,658,795	1,151,000
Ouray, Colo.	Montrose, Colo.	35,389	7,111	61,806	33,333
Park City, Utah	Roper, Utah	66,182	13,000	107,788	55,697
Poncha Jct., Colo.	Salida, Colo.	495,600	44,800	746,800	288,800
Provo, Utah	Springville, Utah	1,831,200	3,256,400	5,179,800	6,508,800
Pueblo, Colo.	Colorado Springs, Colo.	976,136	336,886	2,064,455	1,415,432
Rouse, Colo.	Mayne, Colo.	69,500	500	102,000	33,000
Salida, Colo.	Pueblo, Colo.	1,452,656	471,302	2,949,094	2,038,875
Salt Lake City, Utah	Midvale, Utah	1,716,750	3,052,875	4,856,125	6,102,000
Santa Fe, N. M.	Antonito, Colo.	2,280	9,360	26,408	33,992
Silver City, Utah	Springville, Utah	258,556	21,156	383,800	147,444
Silverton, Colo.	Durango, Colo.	10,067	5,356	21,556	16,556
Soldier Summit, Utah	Colton, Utah	1,618,143	3,055,000	4,588,143	6,068,000
Somerset, Colo.	Delta, Colo.	302,907	10,116	471,047	173,488
Southern Jct., Colo.	Pueblo, Colo.	704,000	148,250	1,331,250	739,500
Spring Canyon Jct., Utah	Rains, Utah	Yard Movement		Yard Movement	
Springville, Utah	Thistle, Utah	1,627,733	2,894,533	4,604,267	5,785,533
Sunnyside, Utah	Mounds, Utah	358,000	3,118	514,941	160,706

COURT EXHIBIT No. 2e—Continued

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver and Rio Grande Western Railroad
Freight Traffic Density
Year Ended December 31, 1939

Reads East		Net Ton Miles (Revenue & Company)		Gross Ton Miles	
		East Density	West Density	East Density	West Density
Thistle, Utah	Soldiers Summit, Utah	1,627,767	2,985,000	4,604,300	5,966,367
Trinidad, Colo.	Walsenburg, Colo.**	329,293	49,415	526,829	253,024
Utaline, Utah-Colo.	Grand Jct., Colo.	1,543,265	1,175,824	3,671,882	3,204,941
Walsenburg, Colo.	Southern Jct., Colo.	787,457	146,261	1,464,457	825,022
Grand Total		532,780	404,936	1,242,663	1,092,974

(*) Also Garfield to Welby.
(#) Over Denver & Salt Lake Ry.
(##) Dotsero Cutoff.
(**) C. & S. Ry. Tracks.

[fol. 1603] COURT EXHIBIT No. 2e

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees
(Copy from H. H. Copeland & Son)

Denver & Rio Grande Western R. R.
Freight Traffic Density
Year Ended December 31, 1939

Mortgage Liens	Net Ton Miles (Revenue and Company) Density	Net Ton Miles (Revenue and Company) Per Dollar of Funded Debt Outstanding Including Prior Liens
Denver & Rio Grande Western R.R.—Trustees' Ctfs. Series "G" 3½s, 1942	881,555	397
Denver & Rio Grande R.R.—1st Cons. Mtge. 4s and 4½s, 1936	598,390	20
Rio Grande Western Ry.—1st Trust Mtge. 4s, 1939	2,563,056	65
Rio Grande Western Ry.—1st Cons. Mtge. 4s, 1949	1,593,371	33
Rio Grande Junction Ry.—1st Mtge. 5s, 1939	3,092,598	96
Denver & Rio Grande Western R.R.—Rfdg. & Improv. Mtge Series "A" 6s, 1974 and "B" 5s, 1978	940,807	21*
Denver & Rio Grande Western R.R.—Gen. Mtge. 5s, 1955	940,807	16*

* Direct and collateral lien.

Years Ended December 31	Net Ton Miles (Rev. & Co.) Density	Ratio of Revenue Ton Miles To Rev. & Company Ton Miles	Average Revenue Per Net Ton Mile Rev. & Co. Freight (Mills)	Density Per Cent of 1939
1939	937,716	91.2%	9.3	100.0%
1938	833,193	92.8	9.7	88.9

COURT EXHIBIT NO. 3, SHEET 3

Utah Fuel Company and Subsidiary Companies

Summaries of Consolidated Income, Years Ended December 31, 1933 thru 1939

	1933	1934	1935	1936	1937	1938	1939
Gross Earnings from Sale of Coal, Coke and Merchandise	$1,295,507	$1,416,869	$1,650,287	$1,902,202	$2,273,904	$2,086,051	$2,090,258
Net Earnings from Rentals, etc.	53,261	52,283	48,692	48,692	40,470	28,784	55,409
Net Income from other Sources—Interest, etc.	9,441	7,941	12,370	8,178	6,495	4,081	4,563
Total Income	$1,358,209	$1,477,093	$1,711,349	$1,959,009	$2,320,869	$2,118,316	$2,150,230
Operating Expenses	$979,383	$1,097,727	$1,303,148	$1,563,959	$1,810,535	$1,623,700	$1,632,598
Income Charges	477,880	425,492	405,210	383,988	421,888	443,450	454,458
Total Cost	$1,457,263	$1,523,219	$1,708,358	$1,947,947	$2,232,423	$2,067,150	$2,087,056
Total Net Income before Charging Federal Income Taxes	(d) $99,054	(d) $46,126	2,991	$11,062	$88,446	$51,766	$63,174
Provision for Federal Income Taxes		220	2,552	3,509	19,016	10,294	17,319
Total Net Income After Charging Federal Income Taxes	(d) $99,054	(d) $46,346	$439	$7,553	$69,430	$41,472	$45,855
Adding Depreciation and Depletion Charges (Included in Income Charges above) of	292,654	234,742	221,628	216,293	226,445	236,912	236,376
Results in New Money Earned	$193,600	$188,396	$222,067	$223,846	$295,875	$278,384	$282,231
Total Depreciation and Depletion Included in above Income Charges (Affiliated Companies are: Utah Fuel Company, The Calumet Fuel Company, Wasatch Store Company, Bamberger Coal Company, Castle Gate Coal, Coke and Fuel Company for Yards at Ogden and Brigham, Utah Fuel-Coal Company, Utah Fuel Stoker Sales Company and Utah Grazing Lands Company)	$292,654	$234,742	$221,628	$216,293	$226,445	$236,912	$236,376
Consolidated Net Cost of Additions & Betterments	$85,097	$82,935	$131,318	$203,494	$278,176	$125,402	$523,528

(d) Deficit

Current

[fol. 1605]

COURT EXHIBIT No. 3, SHEET 4

Utah Fuel Company and Subsidiary Companies

Condensed Balance Sheets—By Companies and Consolidated—At December 31, 1939

Assets	Utah Fuel Co.	The Calumet Fuel Company	Wasatch Store Company	Utah Fuel Stoker Sales Company	Bamberger Coal Company	Utah Fuel-Coal Company	Utah Grazing Lands Company	Eliminations	Total
Cash	$72,583.35	$104,370.59	$65,522.12	$3,421.74	$11,912.16	$2,087.39	$913.94		$260,811.29
Accounts Receivable:									
Railroads	81,651.27	920.21							82,571.48
All others	184,821.54	11,664.11	31,811.28	1,077.03	35,542.13	3,126.95			268,043.04
Affiliated Companies	5,474.31							$5,474.31	
Bills Receivable	7,318.09								7,318.09
Inventories—Fuel, Supplies and Merchandise	144,168.63	13,159.42	55,694.91		25,347.18	9,795.79			248,165.93
Securities Owned:									
Guaranty Fund—U. S. Bonds deposited in accordance with Colorado Workmen's Compensation Act	34,788.13	53,454.38							88,242.51
Stocks of Subsidiary Companies (Par Value)	938,500.00		8,360.00					946,860.00	
Deferred Debit Items	10,006.30	3,991.25	222.35		283.03	3.45			14,506.38
Cash Surrender Value of Insurance on Life of A. B. Apperson		7,629.00							7,629.00
Property	14,383,087.32	890,531.88	55,255.28		19,169.30	765.32	38,000.00		15,386,809.10
Total	$15,862,398.94	$1,085,720.84	$216,865.94	$4,498.77	$92,253.80	$15,778.90	$38,913.94	$952,334.31	$16,364,096.82
Liabilities									
Accounts Payable:									
Pay Rolls, Vouchers, etc.	$224,996.82	$13,949.31	$22,327.53		$4,355.05	$8.50			$265,637.21
Provision for Federal Income Taxes	16,328.24		832.05				$159.50		17,319.79
Affiliated Companies						5,374.31	100.00	$5,474.31	
Accrued Expenses	12,999.76	7,655.43	1,026.62		1,309.37	119.74	25.00		23,129.92
Reserves	2,827,689.18	367,498.62	37,129.79		6,272.22	210.55			3,238,800.36
Capital Stock	10,000,000.00	665,500.00	150,000.00	$8,360.00	75,000.00	10,000.00	38,000.00	946,860.00	10,000,000.00
Excess of Par Value over Cost of Stock of Subsidiaries	43,599.29								43,599.29
Surplus	2,736,785.65	31,117.48	5,555.95	*3,861.23	*5,317.16	65.80	629.44		2,775,610.25
Total	$15,862,398.94	$1,085,720.84	$216,865.94	$4,498.77	$92,253.80	$15,778.90	$38,913.94	$952,334.31	$16,364,096.82

Salt Lake City, Utah
July 19, 1940

* Denotes red figure.

Correct:
(Signed) R. D. Pomeroy
Auditor

[fol. 1606]

GUARANTY TRUST EXHIBIT 5

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Net Tons (Revenue and Company) per mile of road

Movement by:	D&SLW RR	D&SL Ry.		
		Joint Line		Non-Joint
	D&RGW RR	D&RGW RR	D&SL Ry	D&SL Ry
		Eastward		
1936	826,000	772,000	986,000	665,000
1937	846,000	782,000	898,000	685,000
1938	678,000	621,000	692,000	581,000
1939	779,000	718,000	725,000	576,000
		Westward		
1936	449,000	326,000	77,000	52,000
1937	552,000	375,000	60,000	47,000
1938	496,000	362,000	43,000	36,000
1939	540,000	431,000	43,000	35,000

Accounting Department,
August 6, 1940.

[fol. 1607]

EXHIBIT No. 1

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Expenditures for Additions to and Betterments
(Excludes Retirements)

	Road					
	D&RGW	Improvements on Leased Lines	Total Road	Equipment	Total Road & Equipment	Operating Expenses in Connection with Improvements
2 Months 1935	61,190	9,217	70,407	3,307	73,714	51,400
Year 1936	1,447,272	135,799	1,583,071	631,554	2,214,625	930,070
1937	2,521,147	455,116	2,976,233	1,703,544	4,679,777	1,569,985
1938	854,377	84,953	939,330	2,068,759	3,008,089	742,820
1939	984,074	130,244	1,114,318	1,986,261	3,100,579	1,272,409
1940	922,516	41,319	963,835	2,440,936	3,404,771	1,075,428
1941	1,214,151	138,182	1,352,333	4,857,383	6,209,716	1,238,561
	8,004,697	994,830	8,999,527	13,691,744	22,691,271	6,881,673
1942 (Estimated)	2,991,761	276,782	3,268,543	4,317,580	7,586,123	1,578,955
	$10,996,458	$1,271,612	$12,268,070	$18,009,324	$30,277,394	$8,460,628

NOTE: 1942 figures based on completion of all authorized work.

Accounting Department,
October 22, 1942.

[fol. 1608] EXHIBIT No. 2

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Condensed Income Account

	1941 Actual	1942 8 mos. Actual 4 mos. Estimated
Operating Revenues	$31,572,624	$53,885,005
Operating Expenses	24,219,120	30,644,991
Net Revenue	7,353,504	23,240,014
Taxes and Rents (Excluding Income Taxes)	2,836,425	3,500,000
Net Railway Operating Income	4,517,079	19,740,014
Other Income, Net	32,751 Dr.	50,000 Dr.
Available for Interest and Income Taxes	4,484,328	19,690,014
Interest	6,786,242	5,974,294
Income Taxes		1,300,000
Net Income	$2,301,914 Dr.	$12,415,720

Accounting Department,
Denver, Colo., Oct. 22, 1942.

[fol. 1609] EXHIBIT No. 3

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Cash on hand at close of business Oct. 21, 1942		$7,468,482.09
Estimated cash balance as of Dec. 31, 1942		9,557,000
Expenditures authorized or contemplated to be provided for out of cash on hand Dec. 31, 1942.		
Payment of Conditional Sales Agreements	2,282,106	
Purchase of Diesel Freight Locomotives	3,044,706	
Purchase of 1000 Freight Cars	3,582,300	
Purchase of 300 Dump Cars	990,000	
Improvement Work authorized, but not completed	3,100,000	
1942 Ad Valorem Taxes payable in 1943	470,000	
Last quarter R. R. Unemployment Taxes	175,000	
Federal and State Income Taxes	1,300,000	
		$14,944,112
Cash Working Balance Required	$1,250,000	

Accounting Department,
Denver, Colo., Oct. 22, 1942.

[fol. 1610] EXHIBIT No. 4

The Denver and Rio Grande Western Railroad Company

Wilson McCarthy and Henry Swan, Trustees

Charges to A/C 331—Equipment Depreciation for year 1942—8 mos. Actual—4 mos. Estimated	$1,387,234
Estimated charges to A/C 266—Road Property —Depreciation for year 1943	700,000

Accounting Department,
Denver, Colo., Oct. 22, 1942.

[fol. 1611] EXHIBIT No. 5

The Denver and Rio Grande Western Railroad Company

Wilson McCarthy and Henry Swan, Trustees

Estimated Income Account

The Denver and Salt Lake Railway Company

Year 1942

(8 mos. Actual—4 mos. Estimated)

Operating Revenues	$2,719,857
Operating Expenses	1,949,137
Net Operating Revenue	770,720
Taxes and Rents—Net	263,417 Cr.
Net Railway Operating Income	1,034,137
Other Net Income	12,866
Total Operating and Other Income	1,047,003
Rent of Leased Roads & Equipment, Interest on First Mortgage and Miscellaneous Income Charges	465,570
Net available for interest on Income Bonds	$581,433

Denver, Colo., Oct. 22, 1942.

[fol. 1612] EXHIBIT No. 7

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Present and Projected D&RGW Annual Equipment Disbursements Compared Depreciation Accruals

	Grand Total All Equipment	
Year	Disbursements	Amortization & Deprec.
1942	$3,687,889	$2,215,024
1943	3,661,831	3,419,965
1944	2,811,446	3,868,965
1945	2,679,455	3,868,965
1946	2,567,296	3,868,965
1947	2,560,151	3,033,941
1948	2,270,728	1,829,000
1949	2,223,021	1,380,000
1950	2,380,516	1,380,000
1951	2,234,469	1,380,000
1952	1,866,050	1,380,000
1953	1,277,814	1,380,000
1954	1,225,024	1,380,000
1955	1,177,434	1,380,000

[fol. 1613] EXHIBIT No. 8

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Average Earnings Years 1930–1941 Inclusive
Average Earnings Years 1930–1941 Inclusive

	As Recorded in Rio Grande 1941 Stockholders Report	Estimated Roadway Depreciation*	Recorded Earnings Less Roadway Depreciation
Total Operating Revenues	$23,895,598		$23,895,598
Net Railway Operating Income	2,781,862	$729,859	2,052,003
Available for Interest on Funded Debt	2,362,933	729,859	1,633,074
Net Income (After Fixed Charges)	−2,874,285**	729,859	−3,604,144**

* Annual Roadway depreciation estimated at $729,859 for Rio Grande including leased lines, but *not* including Denver & Salt Lake.

** Debit balance.

Statistical Bureau
October 22, 1942

[fol. 1614] S. L. W. EXHIBIT No. 1

Sheet 1 of 2 Sheets

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

General Balance Sheet—Asset Side
December 31, 1942

Investments:			
701 Road and Equipment Property			$225,140,315.59
702 Improvements on Leased Property			501,086.73
704 Deposits in Lieu of Mortgaged Property Sold			37,874.64
705 Miscellaneous Physical Property			221,358.20
706 Investments in Affiliated Companies—Pledged			14,472,917.38
706 Investments in Affiliated Companies—Unpledged			1,944,570.58
707 Other Investments			734.00
			$242,318,857.12
Current Assets:			
708 Cash			$10,050,149.96
709 Temporary Cash Investments			800,000.00
711 Special Deposits			840,972.34
714 Net Balance Receivable from Agents and Conductors			420,077.75
715 Miscellaneous Accounts Receivable			4,326,907.71
716 Material and Supplies			4,487,379.21
719 Other Current Assets			59,065.57
			$20,983,652.54
Deferred Assets:			
720 Working Fund Advances			$5,175.80
722 Other Deferred Assets			531,225.89
			$536,401.69
Unadjusted Debits:			
723 Rents and Insurance Premiums Paid in Advance			$35,525.36
727 Other Unadjusted Debits			4,986,233.10
			$5,021,758.46
728 Securities Issued or Assumed—Unpledged—Held by Company	$12,400.00		
729 Securities Issued or Assumed—Pledged			
(Redeemed—Held by Trustee)	$8,333,000.00		
Pledged (Held as Collateral)	13,331,000.00		
	$21,664,000.00		
	$21,676,400.00		$268,860,669.81

[fol. 1615] Sheet 2 of 2 Sheets

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

General Balance Sheet—Liability Side

December 31, 1942

Stock:		
751 Capital Stock:		
Common		$62,457,539.62
Preferred		16,433,200.00
752 Stock Liability for Conversion		12,400.00
		$78,903,139.62
Long-Term Debt:		
755 Funded Debt Unmatured		$58,888,000.00
755½ Long-Term Debt in Default		61,328,000.00
756 Trustees' Securities		5,758,000.00
757 Amounts Payable to Affiliated Companies		4,290,826.65
Total		$130,264,826.65
Total Capital Liabilities		$209,167,966.27
Governmental Grants:		
754 Grants in Aid of Construction		$1,575,754.75
Current Liabilities:		
758 Loans and Bills Payable		$3,746,847.01
759 Traffic and Car-Service Balances—Cr.		1,719,643.35
760 Audited Accounts and Wages Payable		2,912,444.57
761 Miscellaneous Accounts Payable		844,216.79
762 Interest Matured Unpaid		113,569.37
764 Unmatured Interest Accrued		996,431.24
766 Unmatured Rents Accrued		21,804.28
767 Accrued Tax Liability		3,585,816.60
768 Other Current Liabilities		231,802.29
		$14,172,575.50
Deferred Liabilities:		
769½ Matured Interest in Default		$45,286,720.18
770 Other Deferred Liabilities		295,412.48
		$45,582,132.66
Unadjusted Credits:		
772 Premium on Funded Debt		$12,209.10
775½ Accrued Amortization of Defense Projects—Road		706.92
776 Accrued Depreciation—Equipment		15,351,301.89
776½ Accrued Amortization of Defense Projects—Equipment		743,281.78
778 Other Unadjusted Credits		544,215.96
		$16,651,715.65
Corporate Surplus:		
779 Additions to Property through Income & Surplus		$387,294.25
784 Profit and Loss	(Dr)	18,676,769.27
Total Corporate Surplus	(Dr)	$18,289,475.02
		$268,860,669.81

Accounting Department,
April 12, 1943.

[fol. 1616]

S. L. W. Exhibit No. 2

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Income Account

	1942	Two Months to February 28, 1943
Operating Revenues:		
Freight	$46,950,677.01	$8,373,525.73
Passenger	5,205,085.21	1,356,634.07
Mail	392,005.64	63,536.45
Express	730,438.84	80,663.36
Miscellaneous	1,197,289.06	258,391.12
Operating Revenues	$54,475,495.76	$10,132,750.73
Operating Expenses	$31,260,694.28	$5,967,611.50
Net Revenue from Operation	$23,214,801.48	$4,165,139.23
Railway Tax Accruals	$4,985,816.16	$1,412,528.58
Railway Operating Income	$18,228,985.32	$2,752,610.65
Hire of Equipment—Receipts	1,976,299.16	380,282.32
Joint Facility Rent Income	572,989.28	97,836.91
Gross Operating Income	$20,778,273.76	$3,230,729.88
Hire of Equipment—Payments	2,651,769.89	643,646.83
Joint Facility Rents	897,298.29	157,056.54
Net Railway Operating Income	$17,229,205.58	$2,430,026.51
Other Income	200,566.84	13,936.96
Total	$17,429,772.42	$2,443,963.47
Fixed Charges:		
Rent for Leased Roads & Equipment	$111,709.45	$18,724.70
Interest on Funded Debt	5,737,454.79	943,175.36
Interest on Unfunded Debt	268,696.81	34,335.57
Amortization of Discount on Funded Debt	4,945.77	
Total Fixed Charges	$6,122,806.82	$996,235.63
Net Income	$11,306,965.60	$1,447,727.84

Accounting Department,
April 12, 1943.

S.L.W. EXHIBIT NO. 5

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
Wilson Mc Carthy and Henry Swan, Trustees

PAYMENTS BY DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
TO DENVER AND SALT LAKE RAILWAY COMPANY
IN CONNECTION WITH JOINT OPERATION BETWEEN L.P. 1.5 NORTHWESTERN TERMINAL MAIN LINE AN
CALENDAR YEARS 1940, 1941 AND 1942.

	Year Ending December 31, 1940				Year Ending December 31,1941				
	Recurring Charges	Extraordinary Charges	Other Non-Recurring Charges	Total	Recurring Charges	Extraordinary Charges	Other Non-Recurring Charges	Total	Recur Char
Interest Rental-Agreed contract valuation Joint Line	$300,000			$300,000	$300,000			$300,000	$300,
Interest Rental-Additions and Betterments Joint Line	44,428			44,428	51,065			51,065	51,
Rental-Moffat Tunnel	172,950			172,950	172,950			172,950	172,
Taxes on Joint Line	47,200			47,200	46,497			46,497	43,
Interest Rental-East and West Bound Main Lines Utah Junction	4,205			4,205	4,165			4,165	4,
Interest during construction-East and West Bound Main Lines-Utah Junction									
Interest Rental-Northwestern Terminal Main Line M.P. 1.50 - 3.18	5,315			5,315	5,595			5,595	5,
Rental of Right of Way 38th to 42nd Aves. Northwestern Terminal	500			500	500			500	
Rental paid by D & S.L. to C & S space for 48th Ave. Tank	10			10	10			10	
Taxes on Northwestern Terminal Main Line MP 1.50 - 3.18	3,593			3,593	3,475			3,475	3,
Adjustment Taxes- 1937, 1938, 1939						5,551		5,551	
Improvements-Moffat Tunnel (Relining)									
Improvements-Moffat Tunnel Section (other than tunnel relining)		$17,264		17,264		14,843		14,843	
Insurance-Joint Line including Moffat Tunnel					268			268	
Operating Expenses-Joint Line	69,366			69,366	88,139			88,139	115,
Ordinary Maintenance JointLine	144,729	3,442		148,171	213,575	3,354		216,929	358,
Maintenance Charges in connection with Improvement Work		35,353		35,353		29,587		29,587	
Tabernash Engine Terminal:									
Maintenance	206			206	930			930	
Operation	4,117			4,117	2,828			2,828	3,
Charges in connection with Improvement Work						676		676	
East and West Bound Main Lines-Utah Junction									
Maintenance and Operation	1,028			1,028	2,756	237		2,993	1,
Northwestern Terminal Main Line MP1.50-3.18:									
Maintenance and Operation	1,540								

EXHIBIT NO. 5

...DS WESTERN RAILROAD COMPANY
and Henry Swan, Trustees

GRANDE WESTERN RAILROAD COMPANY
LT LAKE RAILWAY COMPANY
.F. 1.5 NORTHWESTERN TERMINAL MAIN LINE AND ORESTOD
1940, 1941 AND 1942.

ng December 31,1941			Year Ending December 31, 1942		
Other			Other		
aordinary Non-Recurring Charges	Charges	Total	Recurring Charges	Extraordinary Non-Recurring Charges	Total
	$300,000	$300,000	$300,000		$300,000
	51,065	51,792			51,792
	172,950	172,950			172,950
	46,497	43,824			43,824
	4,165	4,155			4,155
	5,595	5,695			5,695
	500	500			500
	10	10			10
	3,475	3,427			3,427
551	5,551				
843	14,343		48,496		48,496
	268	268			268
	88,139	115,886			115,886
354	216,929	358,943			358,943
587	29,587		27,415		27,415
	930	123			123
	2,828	5,424			5,424
676	676				
237	2,993	1,941			1,941

	Charges	Charges	Charges				
Interest Rental-Agreed contract valuation Joint Line	$300,000		$300,000	$300,000		$300,000	$300
Interest Rental-Additions and Bettements Joint Line	44,428		44,428	51,065		51,065	5
Rental-Moffat Tunnel	172,950		172,950	172,950		172,950	17
Taxes on Joint Line	47,200		47,200	46,497		46,497	4
Interest Rental-East and West Bound Main Lines Utah Junction	4,205		4,205	4,165		4,165	
Interest during construction-East and West Bound Main Lines-Utah Junction							
Interest Rental-Northwestern Terminal Main Line M.P. 1.50 - 3.18	5,315		5,315	5,595		5,595	
Rental of Right of Way 38th to 42nd Aves. Northwestern Terminal	500		500	500		500	
Rental paid by D & S.L. to C & S space for 48th Ave. Tank	10		10	10		10	
Taxes on Northwestern Terminal Main Line MP 1.50 - 3.18	3,593		3,593	3,475		3,475	
Adjustment Taxes- 1937, 1938, 1939					5,551	5,551	
Improvements-Moffat Tunnel (Relining)							
Improvements-Moffat Tunnel Section (other than tunnel relining)		$17,264	17,264		14,843	14,843	
Insurance-Joint Line including Moffat Tunnel				268		268	
Operating Expenses-Joint Line	69,366		69,366	88,139		88,139	11
Ordinary Maintenance JointLine	144,729	3,442	148,171	213,575	3,354	216,929	35
Maintenance Charges in connection with Improvement Work		35,353	35,353		29,587	29,587	
Tabernash Engine Terminal:							
Maintenance	206		206	930		930	
Operation	4,117		4,117	2,828		2,828	
Charges in connection with Improvement Work					676	676	
East and West Bound Main Lines-Utah Junction							
Maintenance and Operation	1,028		1,028	2,756	237	2,993	
Northwestern Terminal Main Line MP1.50-3.18:							
Maintenance and Operation	1,540		1,540	2,097		2,097	
Maintenance Charges in connection with improvement work					3,520	3,520	
Coal for D & R.G.W. Locomotives	9,698		9,698	24,341		24,341	
Miscellaneous							
Advance Surveys							
Stationery, Timetables, etc	208		208	565		565	
Wrecking Expense	2,049		2,049	10,983		10,983	
Pilot Service	222		222	2,210		2,210	
Helper Service	403		403	250		250	
Rental of Engines				4,630		4,630	
Rent of Joint Property-Credit	219		219	290		290	
Total	$811,548	$56,059	$867,607	$937,539	$57,768	$995,307	$1,1

Accounting Department
March 19, 1943

	$300,000	$300,000		$300,000
	51,065	51,792		51,792
	172,950	172,950		172,950
	46,497	43,824		43,824
	4,165	4,165		4,165
	5,595	5,695		5,695
	500	500		500
	10	10		10
	3,475	3,427		3,427
551	5,551			
843	14,843		48,496	48,496
	268	268		268
	88,139	115,866		115,866
654	216,929	358,943		358,943
587	29,587		27,415	27,415
	930	123		123
	2,828	5,424		5,424
676	676			
237	2,993	1,941		1,941
	2,097	2,326		2,326
520	3,520			
	24,341	66,377		66,377
	565	427		427
	10,983	28,871		28,871
	2,210	7,577		7,577
	250	3,136		3,136
	4,630	45,977		45,977
	290	240		240
768	$995,307	$1,219,389	$75,911	$1,295,300

S. L. W. Exhibit No. 7—Continued

547	Interest on Unfunded Debt		426.25	
551	Miscellaneous Income Charges		7,885.75	
	Total Deductions from Gross Income			1,181,889.12
	Net Income Balance Transferred to Profit and Loss			$83,909.68
	Profit and Loss			
Credits:				
602	Credit balance transferred from Income	$83,909.68		
607	Miscellaneous Credits	3,774.10		
			$87,683.78	
Debits:				
611	Debit balance, December 31, 1942	$698,302.36		
619	Loss on Retired Road and Equipment	26,452.87		
621	Miscellaneous Debits	387.80		
			725,143.03	
	Debit Balance December 31, 1942 carried to page 3			637,459.25

S. L. W. Exhibit No. 7—Continued

[fol. 1619]

Asset Side

Investments:			
701 Investment in Road and Equipment:			
Road	$15,438,564.52		
Equipment	2,274,507.59		
702 Improvements on Leased Property		$17,713,072.11	
706 Investments in Affiliated Companies:		552,109.09	
Railway Express Agency, Inc.	$19,827.93		
Ry. Expr. Agency, Inc. Capital Stock	100.00		
Railroad Credit Corporation	5,661.11	25,589.04	
Current Assets:			$18,290,770.24
708 Cash			
Agents & Condrs. Remittances in transit	$657,220.86		
	1,614.64		
711 Cash Deposited to pay coupons		$658,835.50	
Cash Deposited to pay Employees War Bond Fund		43,395.25	
713 Traffic and Car Service Balances Receivable		4,831.75	
714 Net Balance Receivable from Agents and Conductors		166,669.56	
715 Miscellaneous Accounts Receivable:		16,249.67	
U. S. Govt. Transportation Requests	$4.95		
Individuals and Companies	170,317.69		
Postmaster General	6,120.38		
Railway Express Agency, Inc.	1,895.00		
716 Material and Supplies:		178,338.02	
Stationery Stock	$5,157.70		
Roadway Stock	232,378.76		
Store Stock	218,230.42		
Fuel Stock	6,900.90		
717 Accrued Int. Receivable Ry. Expr. Agency Advances		462,667.78	
719 Other Current Assets		80.44	
		4,554.39	
			1,535,622.36

S. L. W. EXHIBIT No. 7—Continued

Deferred Assets:			
720 Working Fund Advances		$232.22	
722 Other Deferred Assets		127.94	
			360.16
Unadjusted Debits:			
723 Rents and Insurance Premiums Paid in Advance		$3,273.21	
727 Other Unadjusted Debits		101,761.90	105,035.11
728 Securities Issued or Assumed, Unpledged:			
D&SL Ry 1st Mtg. 4% Bonds	$1,000,000.00		
Total			$19,931,787.87

S. L. W. Exhibit No. 7—Continued

Unadjusted Credits:		
775 Accrued Depreciation—Road	$7,138.79	
776 Accrued Depreciation—Equipment	1,253,501.22	
778 Other Unadjusted Credits	65,894.95	1,326,534.96
Total		$20,498,791.07
Corporate Surplus:		
779 Additions to Property thru Income and Surplus	$70,456.05	
784 Profit and Loss Balance (from page 1)	*637,459.25	*567,003.20
Total		$19,931,787.87

*Red in Copy.

Denver, Colorado, February 25, 1943.

L. L. Prater,
Auditor.

[fol. 1621]

(Clerk's Note: Mr. Swan has informed this office that the exhibit he testified from on November 15, 1944, was the wrong statement and he filed a corrected statement which is here set forth.)

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Statement of Charges Under Reorganization Plan After Adjustment Account Purchase of Rio Grande Junction Bonds

			1943		1944	1945
1st Mortgage—Fixed 3%			$937,493	(Does not include pledged securities)	$937,493	$937,493
Prior Contingent 1%			312,498	(Does not include pledged securities)	312,498	312,498
Sinking Fund 1st			171,703	(Includes pledged securities)	171,703	171,703
Chase Nat'l Bank Claim (2,158,458)						
(1,524,076 1st Mtge. Bonds)	Fixed 3%	$45,722				
do	Prior Contingent 1%	15,241				
(972,998 Income Bonds)	4½%	43,785				
(1,894,332 Preferred Stock)	5%	94,717				
			$199,465*		(	
Excess of 4% on $2,158,458			113,127*		(86,338	86,338
Reconstruction Finance Corporation Claim						
(1,566,846 1st Mtge. Bonds)	Fixed 3%	$47,005				
do	Prior Contingent 1%	15,668				
(1,388,150 Income Bonds)	4½%	62,467				
(3,181,757 Preferred Stock)	5%	159,088				
			284,228†		(	
Balance on claim			271,796†		(556,024	556,024
Income Bonds 4½%			918,682	(Does not include pledged securities)	918,682	918,682
Sinking Fund Incomes			56,941	(Includes pledged securities)	56,941	56,941
5% Preferred Stock			1,606,006	(Does not include pledged securities)	1,606,006	1,606,006
Equipment Obligations						
Principal						609,000
Interest						110,284
			$4,645,685		$4,645,685	$5,364,969
Less payment under Court Order 534			2,398,679			
			$2,247,006			
1944			4,645,685			
			$6,892,691			
1945			5,364,969			
			$12,257,660			

* Excess of $86,338 constitutes a payment of principal.
† Figured on basis of collateral—Interest on claim amounts to $556,024.

Denver, Colorado,
December 28, 1944

[fol. 1618]

S. L. W. Exhibit No. 7

The Denver and Salt Lake Railway Company

Income, Profit and Loss, and General Balance Sheet
December 31, 1942

Income

Operating Income:			
501 Railway Operating Revenue		$2,880,758.56	
531 Railway Operating Expenses		1,959,407.03	
Net Revenue from Railway Operations			$921,351.53
532 Railway Tax Accruals			338,308.16
Total Operating Income			$583,043.37
Non-Operating Income:			
504 Rent from Locomotives		$59,372.97	
507 Rent from Work Equipment		2,148.94	
508 Joint Facility Rent Income		608,020.22	
509 Income from Lease of Road and Equipment		3,270.00	
510 Miscellaneous Rent Income		8,515.11	
514 Income from Funded Securities		911.43	
519 Miscellaneous Income		516.76	
Total Non-Operating Income			682,755.43
Gross Income			$1,265,798.80
Deductions from Gross Income:			
536 Hire of Freight Cars—Debit Balance		$52,817.49	
538 Rent for Passenger Train Cars		421.17	
542 Rent for Leased Roads and Equipment		394,223.27	
543 Miscellaneous Rents		6,115.19	
546 Interest on Funded Debt:			
First Mortgage Bonds		60,000.00	
Income Mortgage Bonds		660,000.00	

[fol. 1626]

Liability Side

Stock:			
751 D&SL Ry Co. Capital Stock			$5,317,104 25
Governmental Grants:			
754 Grants in Aid of Construction			105,092 88
Long Term Debt:			
755 Funded Debt Unmatured:			
D&SL Ry Co. 1st Mtg. 4% Bonds Series A	$1,500,000 00		
D&SL Ry Co. Income Mtg. 6% Gold Bonds	11,000,000 00		
D&SL Ry Co. 1st Mtg. 4% Bonds Held in Treasury	$1,000,000 00		12,500,000 00
760 Audited Accounts and Wages Payable:			
Vouchers	$112,104 34		
Pay Checks	104,762 62		
Unclaimed Wages	325 97		
Discharge Checks	1,097 28		
761 Miscellaneous Accounts Payable:		$218,290 21	
Colorado State Service Tax	10		
Colorado State Sales Tax	3 88		
Passenger Refund Drafts	63 01		
Agents Advance Charge Drafts	3,151 07		
762 Interest Matured Unpaid:		3,218 06	
Bond Coupons D&SLRy 1st Mtg 4% Bonds	$29,160 00		
Bond Coupons D&SLRy 1st Mtg 6% Bonds	60 00		
Bond Coupons D&SLRy Income Mtg. Bonds	14,175 25		
764 Unmatured Interest Accrued:		43,395 25	
Accrued Int. D&SLRy 6% Income Mortage Bonds		660,000 00	
767 Accrued Tax Liability:			
Accrued Taxes		281,383 03	
768 Other Current Liabilities		37,262 32	
Deferred Liabilities:			1,243,548 87
770 Other Deferred Liabilities			6,510 11

[fol. 1622]

The Denver and Rio Grande Western Railroad Company
Wilson McCarthy and Henry Swan, Trustees

Statement of Charges Under Reorganization Plan After Adjustment Account Purchase of Rio Grande Junction Bonds

	1943	1944	1945
1st Mortgage—Fixed 3%	$937,493	$937,493	$937,493
Prior Contingent—1%	312,498	312,498	312,498
Sinking Fund 1st	171,703	171,703	171,703
Chase National Bank	86,338	86,338	86,338
Reconstruction Finance Corporation	556,024	556,024	556,024
Income Bonds—4½%	918,682	918,682	918,682
Sinking Fund—Income Bonds	56,941	56,941	56,941
5% Preferred Stock	1,606,006	1,606,006	1,606,006
Equipment Obligations			
Principal			609,000
Interest			110,284
	$4,645,685	$4,645,685	$5,364,969
Less payment under Court Order 534	2,398,679		
	$2,247,006		
1944	4,645,685		
	$6,892,691		
1945	5,364,969		
	$12,257,660		
Estimated Balance—1/1/1945	$5,487,000		
Government Securities	13,500,000		
Tax Notes	3,005,000		
Cash in Deferred Maintenance Fund	304,000		
			$22,296,000
Appropriations and Commitments,			
Reserved for Deferred Maintenance	$3,304,000		
Improvement Program & Carryover	7,000,000		
Income Tax 1944—			
Payable 1945	5,000,000		
			$15,304,000
Balance available for charges			$6,992,000
Amount required under Plan thru 1944			$6,892,691
Balance, without any consideration of 1945 earnings			$99,309

Denver, Colorado,
December 28, 1944.

[fol. 1624] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 278

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

[fol. 1625] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 279

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

[fol. 1626] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 280

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

[fol. 1627] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 281

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

[fol. 1628] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 282

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

IN THE

Supreme Court of the United States

October Term, 1945

No.'s 278-282

RECONSTRUCTION FINANCE CORPORATION, INSURANCE GROUP COMMITTEE, GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, CENTRAL HANOVER BANK AND TRUST COMPANY, TRUSTEE, UNITED STATES TRUST COMPANY OF NEW YORK, TRUSTEE, and THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE,

Petitioners,

vs.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, ET ALS.,

Respondents.

SAME *vs.* THE DENVER AND SALT LAKE WESTERN RAILROAD COMPANY, ET ALS.,

SAME *vs.* CITY BANK FARMERS TRUST COMPANY, TRUSTEE, ET ALS.,

SAME *vs.* THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, ET ALS.,

SAME *vs.* GUY A. THOMPSON, TRUSTEE, ET ALS.,

Respondents.

Supplemental Stipulation as to Printing of Record

Supplemental Stipulation as to Printing of Record

Under date of July 16, 1945 there was executed by counsel for all parties to these cases a "Stipulation as to Printing of Record for Petition for Certiorari" (herein called the Original Stipulation). By paragraph 4 of the Original Stipulation, it was stipulated that, if the Petition of the undersigned Interests of Group 1 for writs of certiorari herein should be granted, which has now been done by orders of the Supreme Court dated October 8, 1945, the printed record for further proceedings in these cases should consist of the printed record designated in the Original Stipulation for the purposes of said Petition and heretofore filed together with such additional portions of the entire record herein certified by the Circuit Court of Appeals for the Tenth Circuit to the Clerk of the Supreme Court as the respective Interests of Groups 1 and 2 should designate for that purpose, the other parties to the Original Stipulation (referred to therein as Interests of Groups 3 and 4) retaining no right to participate in such designation. The undersigned Interests of Group 1 (including all the parties so styled in the Original Stipulation) and the undersigned Interests of Group 2 (including all the parties so styled in the Original Stipulation) desire to agree on such designation of additional portions of the record to be printed.

NOW, THEREFORE, except as may be otherwise directed by the Supreme Court, the undersigned hereby stipulate and agree that:

1. The additional portions of the record to be printed in order to constitute, with the printed record heretofore filed herein, the printed record on which these cases shall be heard, shall be the following:

(a) Those opinions, orders and documents (or portions thereof) referred to in Exhibit A hereto;

(b) Those excerpts from the testimony designated in Exhibit B hereto; and

(c) Those exhibits (or portions thereof) designated in Exhibit C hereto.

Page references in Exhibits A, B and C hereto to the transcript of the Circuit Court that are prefixed by I, or that are not prefixed by any Roman numeral, refer to pages of the transcript filed in the Circuit Court in the Approval Appeals as defined in the Original Stipulation (No.'s 2906-7 below). References to the transcript of the Circuit Court that are prefixed by II refer to pages of the transcript filed in the Circuit Court in the Confirmation Appeals as defined in the Original Stipulation (No.'s 3106-8 below). References to the transcript of the Circuit Court that are prefixed by III refer to pages of the volume certified to the Clerk of the Supreme Court by the Clerk of the Circuit Court containing the proceedings in the Circuit Court and the documents filed before it pursuant to stipulation. Page references to the transcript of hearings before the Interstate Commerce Commission or the District Court are inserted only for the convenience of the undersigned and may be disregarded by the Clerk of the Supreme Court. The documents listed in Exhibit A hereto that are prefixed by an asterisk are listed therein only for convenience and are included in the printed record already made pursuant to the Original Stipulation. The exhibits listed in Exhibit C hereto that are prefixed by an asterisk are listed therein only for clarity, are already available in printed form and, if presented to the clerk pursuant to 2. below, are not to be reprinted.

2. Any of the undersigned may present to the Clerk of the Supreme Court, for use by it as part of the printed

record aforesaid, without reprinting, thirty copies of the presently available printed forms of the following:

(a) This Stipulation (referred to in Exhibit A hereto); and

(b) The following exhibits (referred to in Exhibit C hereto);

(*i*) the Annual Reports to Stockholders of The Denver and Rio Grande Western Railroad Company (or its Debtor Trustees) for the years 1935-1943, both inclusive;

(*ii*) the Annual Reports to Stockholders of The Denver and Salt Lake Railway Company for the years 1936-1943, both inclusive; and

(*iii*) the "Income Account, Statement of Revenues and Expenses, Etc." dated January 25, 1945 and the "Income Account and Financial Exhibit" dated February 3, 1945 of The Denver and Rio Grande Western Railroad Company (by its Debtor Trustees).

The instrument referred to in (a) next above shall be bound as a part of the printed record aforesaid, but the exhibits referred to in (b) next above shall not be.

3. The affected securities owned by the member institutions of Insurance Group Committee, as shown by the record (less later sales), are:

(a) $4,501,000 principal amount of Rio Grande Western Railroad Company First Trust Mortgage Bonds (4%, due 1939);

(b) $4,500,000 principal amount of Rio Grande Western Railroad Company Consolidated Mortgage Bonds (4%, due 1949); and

(c) $2,325,000 principal amount of Denver and Rio Grande Railroad Company Consolidated Mortgage Bonds (4% and 4½%, due 1936).

4. Any of the undersigned may include in his brief a copy of the map entitled "Denver & Rio Grande Western Railroad" that was filed as Appendix A to the October 13, 1944 brief of the undersigned Interests of Group 1 in the Circuit Court, or of any later edition of said map furnished by the Debtor Trustees.

5. All the undersigned reserve the right to refer to any portion of the record certified from the Circuit Court to the Clerk of the Supreme Court (unless the Supreme Court shall require printing thereof), with the same force and effect as if such part were printed and included in the printed record herein. If it should become necessary, additional portions of said record may be designated to be printed by any of the undersigned and, upon being printed, such additional portions shall constitute a part of the printed record herein.

6. This stipulation may be executed in any number of counterparts, all of which together shall constitute but one instrument. The signatures hereto need not be on the same counterpart, but each signature, or any numbers of signatures, may be on different counterparts, or may be on separate signature sheets to be annexed to the text hereof.

Dated as of November 26, 1945.

Interests of Group 1

Signatures of Counsel	Addresses
J. Howard McGrath J. HOWARD McGRATH *Solicitor General of the United States* and	Washington, D. C.
W. Meade Fletcher, Jr. W. MEADE FLETCHER, JR. *Chief Railroad Counsel, Reconstruction Finance Corporation* *For Reconstruction Finance Corporation*	811 Vermont Ave., N. W. Washington 25, D. C.
Henry W. Anderson **By G. D. G.** HENRY W. ANDERSON and	Electric Building Richmond 12, Va.
George D. Gibson GEORGE D. GIBSON *For Insurance Group Committee*	Electric Building Richmond 12, Va.
Edwin S. S. Sunderland EDWIN S. S. SUNDERLAND and	15 Broad Street New York 5, N. Y.
James L. Homire JAMES L. HOMIRE *For Guaranty Trust Company of New York, Trustee*	15 Broad Street New York 5, N. Y.

Alexander M. Lewis	70 Broadway New York 4, N. Y.

ALEXANDER M. LEWIS
For Central Hanover Bank and Trust Company, Trustee

W. A. W. Stewart	45 Wall Street New York 5, N. Y.

W. A. W. STEWART
For United States Trust Company of New York, Trustee

Arthur A. Gammell	15 Broad Street New York 5, N. Y.

ARTHUR A. GAMMELL
For The Chase National Bank of the City of New York, Trustee

Interests of Group 2

William V. Hodges	Equitable Building Denver 2, Colorado

WILLIAM V. HODGES

and

F. C. Nicodemus	40 Wall Street New York 5, N. Y.

F. C. NICODEMUS
For (i) The Denver and Rio Grande Western Railroad Company; and
(ii) The Denver and Salt Lake Western Railroad Company

Edward E. Watts, Jr. EDWARD E. WATTS, JR.	20 Exchange Place New York 5, N. Y.

and

Milton J. Keegan MILTON J. KEEGAN *For City Bank Farmers Trust Company, Trustee*	First National Bank Bldg. Denver 2, Colorado

H. H. Larimore H. H. LARIMORE *For Guy A. Thompson, Trustee of Missouri Pacific Railroad Company*	Missouri Pacific Bldg. St. Louis 3, Missouri

EXHIBIT A

DESIGNATION OF OPINIONS, ORDERS, PLEADINGS, ETC., FOR PRINTING

Reference	Subject Matter	Printed D. Ct. Record Vol. and Pages	Beginning at C.C.A. Transcript Page
Petition of Debtor verified October 30, 1935	Filing under Section 77	1:1	I:1
Debtor's balance sheet October 1, 1935		1:559	I 439
Petition for Intervention by City Bank Farmers Trust Company, Trustee, dated Nov. 19, 1935			I 80
Answer of City Bank Farmers Trust Company, Trustee, to Petition of Trustees to borrow money dated July 13, 1936			I 637
Debtor's original Plan of Reorganization of July 28, 1936—filed July 29, 1936		2:1707–43 including Ex. B but excluding Ex. A	I 682

First plan of Insurance Group Committee—filed June 15, 1937		3:2885–2943 including plan summary	I 914
I. C. C. Examiner Jamison's Plan—filed August 12, 1938		4:4120–97 including plan summary p. 4187	II 43
*I. C. C. first Plan of July 11, 1939—filed July 31, 1939	[a cross reference to Supreme Court Transcript of Record already printed p. 29, including plan summary p. 352]		
*I C. C. Modified Plan of April 2, 1940	[a cross reference to Supreme Court Transcript of Record already printed pages 98 *et seq.*]		
District Court Opinion of December 6, 1940	Opinion concerning Commission's 1940 Plan	7:7124–57	I 1436
Discussion Plan of October 28, 1940—filed January 6, 1941		7:7352–70 including plan summary p. 7361	II 122
District Court's Plan in Opinion of March 6, 1941		7:7684–99 including Ex. A opposite p. 7698	I 1516

EXHIBIT A—CONTINUED

Reference	Subject Matter	Printed D. Ct. Record Vol. and Pages	Beginning at C.C.A. Transcript Page
I. C. C. Examiner Jamison's Plan of August 26, 1941—filed September 2, 1941		8:8147–93 including App. A, facing p. 8192	I 1540
Insurance Group Plan filed October 8, 1941—Summary of Plan			II 142
*I. C. C. Plan of July 13, 1942—filed July 27, 1942	[a cross reference to Supreme Court Transcript of Record already printed pages 113 *et seq.* and plan summary pages 353-5]		
*I. C. C. Plan of June 14, 1943—filed June 28, 1943	[a cross reference to Supreme Court Transcript of Record already printed pages 151 *et seq.* and plan summary pages 182-6]		
Debtor's balance sheet at May 31, 1943 and income statement for May, 1943		9:10,211	I 1786
Petition of City Bank Farmers Trust Co. to Commission dated August 20, 1942			II 143

10

Debtor's Petition for further hearing dated April 30, 1943		I 1816
Commission's Order denying Debtor's Petition for reopening of proceeding		I 1784
Commission's Order denying Debtor's Petition for further hearing		I 1831
Debtor's Objections to the Plan		I 1812
Joint Statement by Debtor and Subsidiary Debtor of Points to be relied on upon appeal	Appeal from Order approving Plan	I 1912
D. Ct. Order No. 478	Affirming SLW lease and SL trackage agreement	I 1824
D. Ct. Order No. 534	Authorizing first payment of interest	II 153
Petition of City Bank Farmers Trust Company dated March 28, 1944 (excluding memorandum on pp. 6-14)	For reallocation of securities	II 148
Answer by Insurance Group Committee, *et als.*		II 185

EXHIBIT A—CONTINUED

Reference	Subject Matter	Printed D. Ct. Record Vol. and Pages	Beginning at C.C.A. Transcript Page
Objections of City Bank Farmers Trust Co. to Plan			II 177
Notice of appeal by City Bank Farmers Trust Company			II 489
Statement of Points on which City Bank Farmers Trust Company intends to rely			II 493
Objections of Guy A. Thompson, Trustee, to Plan			II 172
Orders of the Supreme Court dated October 8, 1945, granting writs of certiorari			
*The Supplemental Stipulation to which this Exhibit is annexed (and attached exhibits)	Designating record for printing in the Supreme Court		

EXHIBIT B

DESIGNATION OF TESTIMONY FOR PRINTING

Beginning at					Ending at				
C.C.A. Tr.		I.C.C. Tr.		With the Word(s)	C.C.A. Tr.		I.C.C. Tr.		After the Word(s)
Page	Line	Page	Line		Page	Line	Page	Line	
Transcript of Hearings before Interstate Commerce Commission									
1957	1	1	1	Before	1960	8	4	8	1924
1967	11	12	11	Since	1969	10	14	10	satisfactory.
1972	13	20	13	William	1972	21	20	21	reorganization.
1976	13	38	13	Q	1984	16	46	16	evidence.)
1996	15	66	15	When	1999	1	69	1	well.
2002	14	72	14	It	2003	21	73	21	work.
2006	6	79	6	Q	2056	5	129	5	evidence.)
2081	1	158	1	Mr.	2081	26	159	1	evidence.)
2082	2	167	2	The	2104	12	189	12	evidence.)
2105	22	191	22	Q	2108	22	194	22	cash.
2109	17	195	17	Mr.	2110	21	196	21	identification.)
2111	15	197	15	The	2114	13	200	13	later.
2117	8	204	8	Now	2128	25	214	25	evidence.)
2129	4	216	4	Q	2133	22	220	22	them.

EXHIBIT B—CONTINUED

Beginning at					Ending at				
C.C.A. Tr.		I.C.C. Tr.		With the Word(s)	C.C.A. Tr.		I.C.C. Tr.		After the Word(s)
Page	Line	Page	Line		Page	Line	Page	Line	
Transcript of Hearings before Interstate Commerce Commission—Continued									
2134	5	224	5	Q	2136	11	226	11	Corporation.
2137	20	234	20	Q	2141	12	238	12	time.
2142	4	240	4	Q	2145	10	243	10	claims.
2146	3	253	3	Q	2147	1	254	1	evidence.)
2148	24	258	24	Have	2151	19	261	19	Company.
2161	17	329	17	Therefore	2162	20	330	20	plan.
2167	10	431	10	(Exhibit	2167	10	431	10	evidence.)
2171	1	504	1	Q.	2174	24	507	24	evidence.)
2175	9	516	9	J. S. Pyeatt	2179	11	520	11	condition.
II 39	22	548	22	Q	II 40	14	549	14	Very.
2237	2	603	2	Examiner	2239	13	605	13	Stewart.
2297	23	818	23	Mr.	2319	6	840	6	obvious.
2320	1	841	1	Leonard	2364	20	855	20	evidence.
2363	2	901	2	Q	2366	4	904	4	Betterments.

2381	10	1129	10	Q
2391	18	1245	18	Q
2394	1	1258	1	Q
2397	19	1279	19	Q
2402	9	1329	9	J. S. Pyeatt
2406	9	1346	9	Q
2409	23	1350	23	Q.
2414	11	1356	11	Q.
2417	14	1393	14	T. A. Hamilton
2445	7	1463	7	T. A. Hamilton
2497	7	1649	7	(Exhibit
2497	18	1649	18	(Exhibit
2500	5	1703	5	Examiner
2504	3	1820	3	Mr.
2508	16	1848	16	Q
2520	21	1971	21	E. H. Burdick
2566	8	2066	8	Q
2575	16	2090	16	Mr.
2648	2	2163	2	Mr.
2649	1	2164	1	Frank
2674	8	2189	8	Mr.
4734	7	2214	7	Q
4762	6	2242	6	Is
4782	1	2262	1	Q
4806	5	2286	5	A
4833	6	2313	6	Mr. Marsh
4848	8	2328	8	I
4891	4	2371	4	Q

2385	24	1133	24	company.
2392	15	1246	15	it.
2394	8	1258	8	stock.
2399	16	1281	16	sir.
2405	25	1332	25	$175,000
2407	5	1347	5	so.
2413	4	1355	4	application.
2416	6	1358	6	draft.
2428	12	1404	12	exhibits.
2459	11	1474	11	is.
2497	8	1649	8	evidence.)
2497	19	1649	19	evidence.)
2500	15	1703	15	Commission.
2507	29	1824	1	witnesses.
2519	6	1859	6	2.94.
2565	6	2016	6	evidence.)
2566	19	2066	19	Yes.
2580	1	2095	1	record.
2648	16	2163	16	excused.
2658	4	2173	4	all.
2681	10	2196	10	noted
4753	17	2233	17	and 263.
4762	17	2242	17	traffic.
4802	5	2282	5	sir.
4832	20	2312	20	so.
4834	25	2314	25	objection.
4863	25	2343	25	Nothing.
4891	25	2371	25	record.

EXHIBIT B—CONTINUED

Beginning at					Ending at				
C.C.A. Tr.		D. Ct. Tr.		With the Word(s)	C.C.A. Tr.		D. Ct. Tr.		After the Word(s)
Page	Line	Page	Line		Page	Line	Page	Line	
Transcript of Hearing before District Court in July-August, 1940; on Old Plan									
4284	1	1	1	In	4286	9	2	32	Company.
4286	14	17	16	C. M. Lightburn	4362	through first paragraph	97	19	lands.
4390	10	225	6	My	4397	25	232	27	opening.
4406	27	541	18	Mr.	4407	1	541	21	admitted.
4407	15	577	23	Mr.	4408	7	578	12	No. 26.
4417	25	615	18	Q	4429	5	628	11	safely.
4441	15	648	1	Thereupon	4444	27	651	15	2-E
4445	1	653	1	Mr.	4445	4	653	4	admitted.
4454	2	869	3	Mr.	4455	8	870	10	admitted
4455	9	919	11	By	4456	29	921	2	record.)
4463	16	946	20	Q	4464	1	947	6	country.
4487	last	1278	26	Mr.	4496	last	1288	28	time.
4503	21	1302	17	Arthur Ridgway	4508	last	1308	last	excused.)

4925	2	1	1	In	4926	16	2	16	corporation.
4927	15	22	14	Q	4932	3	27	2	not.
4937	8	32	8	Q	4953	11	48	4	sir.
4959	2	57	27	Q	4960	1	58	25	Lake.
4965	2	63	26	A	4987	3	85	21	new account.
4990	16	91	5	Now	4992	3	92	21	1944.
4993	19	148	19	Mr.	5008	12	162	12	denied.

Transcript of Hearing before District Court in April, 1943, on Rental

5020	2	1	1	In	5022	13	3	10	Group.
5023	1	30	1	Henry Swan	5023	12	30	12	them.
5024	17	37	17	T. A. Thompson	5033	18	47	18	dollars.
5035	21	50	21	By	5035	27	50	27	right.
5036	8	51	8	L. L. Prater	5040	29	55	29	you.
5042	18	104	28	Mr. Gibson	5043	17	105	26	objection.
5044	1	277	7	The Court	5047	20	280	23	done.
5047	21	282	17	Mr. Gibson	5048	last	283	16	ordered.

EXHIBIT B—CONTINUED

Beginning at					Ending at				
C.C.A. Tr.		D. Ct. Tr.		With the Word(s)	C.C.A. Tr.		D. Ct. Tr.		After the Word(s)
Page	Line	Page	Line		Page	Line	Page	Line	
Transcript of Hearing before District Court in September, 1943, on Approval of Plan									
5276	2	1	1	In	5278	12	3	10	York.
5296	5	261	8	Excerpts	5304	15	270	3	Fuel.
5312	1	279	15	The Court	5315	last	283	last	taken.
Transcript of Hearing before District Court on November 15, 1944, on Improvements									
II 451	1	1	1	In	II 456	last	6	last	signed.

Transcript of Hearing before District Court on November 20, 1944

II 461	1	1	1	In	II 461	last	2	last	determine.

Transcript of Hearing before District Court on November 29, 1944

II 462	1	1	1	In	II 468	last	7	last	record ——

EXHIBIT C

DESIGNATION OF EXHIBITS FOR PRINTING

Number	Subject Matter	Beginning at C.C.A. Tr. p.
	Exhibits from Hearings before Interstate Commerce Commission	
25-25A	Consolidated balance sheet Dec. 31, 1935	2837, 2838
27	"Capitalizable Assets December 31, 1935"	2915
28	Summary of securities	2918
34 (only subdivision IV of Article Third)	Additional issue clause—Western Consol. Mortgage	474
34-J	Utah Fuel Supplement to Western Consolidated Mortgage	3099
35	Utah Fuel Agreement of Dec. 20, 1924	3171
36	Description of Utah Fuel Company (including Ex.'s A and B)	3192
37-A	1924 Supplement to R & I Mortgage	3199
69 (only the 2 paragraphs on p. 12 under caption "Utah Fuel Stock")	Text of segregation formula before revision	3675
117-117A	Normal year estimate, RG	3750, 3751
118 Facing page, Table of Contents and p. 1	" " " "	3752
119 (first table only)	" " " SL	3920
120	" " " Consolidated	3930

155	Utah Fuel Company balance sheets	3969
*209	RG annual report for 1936	4096
*210	SL " " " "	4134
246	RG books less depreciation	4168
253 (only C.C.A. Tr. pages 4169-70, 4173-83, 4189, 4191, 4195-6, 4198-9 and 4203)	Utah Fuel study	4169
*260	RG annual report for 1940	5160
*261	SL " " " "	5089
262	RG earnings on 1940 unit costs	4899
263	SL earnings " " " "	4900
264	Combined RG and SL	4901
268	A & B expenditures 1935-1941	4905
269	Operating expenses in connection with improvements 1935-1941	4906
270	New equipment acquired	4907
272	Overhead and local traffic	4909
273	Interchange	4910
280	Debt to RFC	4923
Bureau of Accounts Report dated July 29, 1936		723
Bureau of Accounts Report dated December 22, 1936 and I.C.C. order thereon of January 9, 1937		5317
Bureau of Valuation Report dated March 1, 1937 and I.C.C. order thereon of March 8, 1937, Facing page and pp. 1-6		830

Number	Subject Matter	Beginning at C.C.A. Tr. p.
	Exhibits from District Court Hearings in July-August, 1940, on Old Plan	
Debtor 1	Reproduction cost	4520
" 5	"Value" of properties	4524
Insurance Group 19	SL income account 1927-1939	4531
Insurance Group 21	" annual report for 1937	4540
" " 22	" " " 1938	4562
" " 23	" " " 1939	4584
" " 24	RG " " " 1937	4608
" " 25	" " " 1938	973
" " 26	" " " 1939	4646
Guaranty Trust Ex. 2A-E	Traffic density figures 1935-1939	4689
" " " 3 (sheets 3 and 4 only)	Utah Fuel data	4700
Guaranty Trust Ex. 5	Traffic density for SL-SLW	4708
	Exhibits from District Court Hearings in October, 1942, on Interest	
Ex. 1	A&B expenditures 1936-1942	5011
" 2	RG income account 1941-42	5012

" 3	RG cash at Dec. 31, 1942	5013
" 4	RG depreciation charges	5014
" 5	SL income account 1942	5015
" 7 (only the first column and the last 2 columns of second sheet—entitled "Present and Projected D&RGW Annual Equipment, etc.")	Equipment depreciation and disbursements 1942-1955	5017
Ex. 8	Average earnings 1930-1941	5019

Exhibits from District Court Hearings in April, 1943, on Rental

Salt Lake Western Ex. 1	RG balance sheet Dec. 31, 1942	5050
" " " " 2	" income account 1942	5052
" " " " 5	Payments by RG under SL trackage contract 1940-1942	5055
" " " " 7	SL financials for 1942	5057
*Insurance Group " 3	SL annual report for 1941	5113
* " " " 4	" " " " 1942	5137
* " " " 6	RG " " " 1941	5198
" " " 7	" " " " 1942	5237

Exhibits from District Court Hearing in August, 1944, on Confirmation of Plan

*C.B.F.T.Co. Ex. 8	RG Annual Report for 1943	II 353

EXHIBIT C—CONTINUED

Number	Subject Matter	Beginning at C.C.A. Tr. p.
Exhibits from District Court Hearing on November 15, 1944, on Improvements		
Dec. 28, 1944 statement (2 pages) entitled "Statement of Charges under Reorganization Plan after Adjustment Account Purchase of Rio Grande Junction Bonds" with Clerk's note	Estimated Jan. 1, 1945 net current position and requirements	II 458-9
Exhibits before C.C.A. by its Order of January 17, 1945		
*Rio Grande annual report for 1935		II 1
*Rio Grande "Income Account, Statement of Revenues and Expenses, etc." dated August 25, 1944		II 345
*Rio Grande "Income Account, Statement of Revenues and Expenses, etc." dated Jan. 25,1945		III 547
*Rio Grande "Income Account and Financial Exhibit" dated February 3, 1945		III 560
*Salt Lake Annual report for 1943		III 573
*Salt Lake "Income, Profit and Loss, and General Balance Sheet, December 31, 1944"		III 557

Endorsed on cover: File No. 49,981, 49,982, 49,983, 49,984, 49,985, 49,989, 49,994. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 278. Reconstruction Finance Corporation, Insurance Group Committee, Central Hanover Bank and Trust Company, Petitioners, vs. The Denver and Rio Grande Western Railroad Company, et al. Term No. 279. Reconstruction Finance Corporation, Insurance Group Committee, Central Hanover Bank and Trust Company, Petitioners, vs. The Denver and Salt Lake Western Railroad Company, et al. Term No. 280. Reconstruction Finance Corporation, Insurance Group Committee, Central Hanover Bank and Trust Company, Petitioners, vs. City Bank Farmers Trust Company, Trustee, et al. Term No. 281. Reconstruction Finance Corporation, Insurance Group Committee, Central Hanover Bank and Trust Company, Petitioners, vs. The Denver and Rio Grande Western Railroad Company et al. Term No. 282. Reconstruction Finance Corporation, Insurance Group Committee, Central Hanover Bank and Trust Company, Petitioners, vs. Guy A. Thompson, Trustee, et al. Petitions for writs of certiorari and exhibit thereto. 278-282 Filed July 30, 1945. 286 Filed August 1, 1945. 291 Filed August 3, 1945. Term No. 278 O. T. 1945. 279 O. T. 1945. 280 O. T. 1945. 281 O. T. 1945. 282 O. T. 1945. 286 O. T. 1945. 291 O. T. 1945.

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